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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1994

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND DEPENDENT TERRITORIES*

[24 March 1995]

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* The initial report submitted by the Government of the United Kingdom is contained in document CAT/C/9/Add.6 and 10; for its consideration by the Committee, see documents CAT/C/SR.91, 92, 132, 133 and 133/Add.2 and the Official Records of the General Assembly, forty-seventh session, Supplement No. 44 (A/47/44), paras. 93-125, and forty-eighth session, Supplement No. 44 (A/48/44), paras. 261-283.

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Part One

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
(Metropolitan Territory)

I. INFORMATION OF A GENERAL NATURE

1. This is the second report by the United Kingdom under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United Kingdom's initial report under the Convention was submitted in March 1991 (CAT/C/9/Add.6) and officials from the United Kingdom Government were examined on that report by the Committee against Torture in November of that year (CAT/C/SR.91 and 92 and CAT/C/SR.88-103 and Corrigenda).

2. Paragraph 3 of the initial report referred to the United Kingdom's ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in respect of the United Kingdom on 1 February 1989. A delegation from the committee established under that Convention visited Great Britain in 1990; the committee's report was published in 1991, together with a detailed United Kingdom response, which was followed by a progress report by the United Kingdom in 1993. A delegation from the committee returned to Great Britain in May 1994; the Government currently expects to receive the committee's report of that visit early in 1995. A delegation from the committee visited Northern Ireland in 1993; its report was sent to the United Kingdom Government in April 1994. The Government's response was published on 17 November 1994.

3. Paragraphs 4 to 7 of the initial report summarized the legal position in the United Kingdom regarding torture. Paragraph 4 referred to section 134 of the Criminal Justice Act 1988, which makes torture an offence and puts beyond doubt the United Kingdom's commitment to enact the provisions of article 4 of the Convention; there have not been any prosecutions under this provision.

4. As noted in paragraph 9 of the initial report, the United Kingdom is a unitary State and comprises England and Wales, Scotland and Northern Ireland; references in this report to "Great Britain" refer to England and Wales and Scotland taken together. England and Wales, Scotland and Northern Ireland each has its own legal system, but similar principles apply throughout the United Kingdom.

5. The initial reports of the Crown dependencies of the United Kingdom are contained in part 2 of the present report. The periodic reports of the dependent territories are contained in part 3, as are the initial reports of Hong Kong and Bermuda.

II. INFORMATION RELATING TO ARTICLES 2 TO 16 OF THE CONVENTION

Introduction

6. The following information is supplementary to that provided in the United Kingdom's initial report of March 1991 and by the United Kingdom delegation at the meetings of the Committee in November 1991 which discussed that report.

7. As described in this part of the report, there have been a number of legislative and administrative developments since 1991 relevant to the United Kingdom's obligations under the Convention. These include:

(a) The Asylum and Immigration Appeals Act 1993, which came into force in July 1993 and provides for an in-country right of appeal at some stage before removal for all refused asylum applicants, except for those who represent a threat to national security (see art. 32 (2) of the 1951 United Nations Convention relating to the Status of Refugees). (See paras. 15-23 below);

(b) The Police and Criminal Evidence Act 1984 (Tape Recording of Interviews) Orders 1991, which, from 1992, has required the tape recording at police stations in England and Wales of interviews with persons suspected of the commission of an indictable offence. (See paras. 33-34 below);

(c) The Northern Ireland (Emergency Provisions) Act 1991 Codes of Practice for the detention, treatment, questioning and identification of persons detained in Northern Ireland under the Prevention of Terrorism (Temporary Provisions) Act 1989, which came into force on 1 January 1994. (See para. 47 below);

(d) The appointment in Northern Ireland in December 1992 of an Independent Commissioner for the Holding Centres to observe, comment on and report on the conditions under which persons suspected of terrorist offences are held at the police offices. (See para. 58 below);

(e) The appointment in December 1992 under the Northern Ireland (Emergency Provisions) Act 1991 of an Independent Assessor of Military Complaints Procedures in Northern Ireland to provide an independent audit of the procedures for handling non-criminal complaints against the armed forces in Northern Ireland. (See paras. 119-120 below); and

(f) The Education Act 1993, which provides that, where corporal punishment is administered to privately funded pupils in independent schools, the punishment should not be inhuman or degrading. (See para. 131 below).

8. Articles in relation to which there have been no new legislative or administrative developments, or in relation to which the Committee did not request additional information during its consideration of the initial report, (that is arts. 6 and 8) are not included in this report. As in the initial report, the United Kingdom has provided information as fully as possible, but

the inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Convention.

Articles 2 and 4

9. During the oral examination on the initial report (CAT/C/SR.92, para. 1) the United Kingdom delegation undertook that the texts of the legislation on torture would be forwarded to the Committee with the second report. (There are also various relevant offences under the common law). The relevant legislation is contained in the:

Criminal Justice Act 1988 (sections 134, 135 and 172(1) to (3));

Offences against the Person Act 1861 (sections 16, 18, 20 and 23); and

Geneva Conventions Act 1957,

and the texts are attached at annex A.

Article 3

Extradition

10. Article 3 of the Convention requires that "No State Party shall .... extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". During the oral examination on the Initial Report (CAT/C/SR.92, para. 51) the Committee suggested that specific provision should be made in legislation or in administrative circulars in order to prevent extradition in such circumstances.

11. The United Kingdom Government has carefully considered the Committee's suggestion, but remains of the view that existing law and procedures offer adequate assurance that no person would be extradited where there was a risk of torture. The likely treatment on return of the person sought, prison conditions, fairness of trial, standards of justice, possible abuse of process, relevant penalties following conviction and the motives of the requesting Government are all factors which are carefully considered before the United Kingdom enters into new extradition arrangements with any State and which the courts and the Secretary of State take into account when considering individual extradition requests. Under sections 6 (1)(c), 6 (1)(d), 11 (3)(c), 12 (1) and 12 (2)(a)(iii) of and paragraphs 1 (2) and 6 (2) of Schedule 1 to the Extradition Act 1989, extradition would be refused if it appeared that the person sought would suffer ill treatment or torture if returned. The European Convention on Human Rights would also provide protection in such a case.

12. The ultimate decision whether or not to extradite a person is made by the Secretary of State. Section 12 (1) of and paragraph 8 (2) of Schedule 1 to the 1989 Act confer on him a completely unfettered discretion to refuse to return any person whose extradition has been requested and who has been committed by the court to await the Secretary of State's decision on the

request. He takes into account all relevant considerations, including, if it were to arise, the provisions of article 3 of this Convention. Given that, in practice, the decision is made by the Secretary of State, no administrative circulars on the question have been issued.

13. In addition, a person whose extradition has been requested has the right to make representations against his return to the Secretary of State, which must be considered; there is no restriction on the nature of the representations which may be put forward. Any decision of the Secretary of State to order surrender is open to challenge by way of judicial review. Unless the courts are satisfied that his decision is lawful and has been properly made, it will be overturned.

14. For these reasons, United Kingdom legislation has not been amended in the way suggested by the Committee.

Asylum

15. The number of asylum seekers entering the United Kingdom rose sharply from some 4,000 in 1988 to a peak of 45,000 in 1991. Following the introduction of new screening procedures, the number of applicants fell to 25,000 in 1992 and 22,400 in 1993 but this was still over five times higher than the figure for 1988. The numbers put severe pressure on the existing system so that a large backlog of cases developed and applications can often take several years to resolve.

16. Of the decisions taken concerning asylum claims, there has been a marked decrease in the percentage recognized as refugees as defined by the 1951 United Nations Convention relating to the Status of Refugees; the recognition rate in the early 1980s was 60 per cent but this fell to 23 per cent in 1990 and to only 3 per cent in 1992. However, although the majority were found not to be refugees, many (44 per cent in 1992) were nevertheless allowed to remain on an exceptional basis, mainly because of delays in dealing with their applications and consequent practical difficulties in enforcing departure. There was also evidence of a significant number of fraudulent and multiple applications. Throughout this period, the United Kingdom continued to assess applications consistently against the criteria set out in the 1951 Convention; changes in recognition rates did not, therefore, result from the Convention criteria being applied in a more restrictive or stringent way, but, rather, from changes in the nature of the applicants.

17. The Government responded to the situation in various ways. In particular, resources were increased significantly, procedures were streamlined and new legislation - the Asylum and Immigration Appeals Act 1993 - was brought into force in July 1993. The 1993 Act, and the accompanying changes in the Immigration Rules made under the Immigration Act 1971 and the Asylum Appeals (Procedure) Rules 1993, apply a balanced approach: the aim is to ensure that unfounded applications are dealt with expeditiously and with finality, while genuine refugees continue to be protected. The following paragraphs briefly explain the main provisions of the legislation.

18. A fundamental change made by the 1993 Act is the introduction of an in-country right of appeal at some stage before removal, with an oral hearing before an independent Special Adjudicator, for all refused asylum applicants, regardless of their immigration status, except for those who represent a threat to national security (see art. 32 (2) of the 1951 Convention). (Previously, asylum appeal rights were limited.) There are strict time-limits within which any appeal should be determined and there is particularly rapid treatment of any appeal relating to a case where the Secretary of State has certified the claim to be "without foundation" - i.e. either the claim does not raise any issue as to the United Kingdom's obligations under the 1951 Convention (because the applicant arrived here via a safe third country) or it is otherwise frivolous or vexatious. All appeals in "without foundation" cases are dealt with under an accelerated appeal procedure and, where the applicant is detained and certain other criteria are met, the intention is to determine the appeal within seven days of its receipt by the Appellate Authority.

19. Other than in "without foundation" cases, an appellant whose appeal has been dismissed by an independent Special Adjudicator can apply for leave to appeal to an Immigration Appeal Tribunal. The 1993 Act also provides a right of appeal to the Court of Appeal or, in Scotland, the Court of Session on a point of law from a final determination of the Tribunal. An application can be made to the High Court for judicial review of a decision of the Secretary of State or the Special Adjudicator.

20. The 1993 Act also allows the Secretary of State to curtail any existing leave to enter or remain in the United Kingdom when refusing an applicant's claim for asylum. This would normally lead to the institution of deportation proceedings and the service of a notice of intention to deport would give rise to a right of appeal to an independent Special Adjudicator and thereafter to the Immigration Appeal Tribunal. Judicial review could also be sought. Among other measures introduced by the 1993 Act was a power to fingerprint all asylum applicants for identification purposes in order to prevent multiple applications and associated fraudulent social security claims.

21. Introducing the right to an appeal before removal for all those refused asylum, regardless of their immigration status, represents a considerable strengthening of the rights of asylum seekers in the United Kingdom. The 1993 Act contains further important safeguards for asylum seekers. For example, section 2 of the 1993 Act states that "Nothing in the immigration rules ... shall lay down any practice which would be contrary to the [1951] Convention". (This has the effect, so far as immigration law is concerned, of guaranteeing the supremacy of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees in domestic law.) Section 6 states that "During the period beginning when a person makes a claim for asylum and ending when the Secretary of State gives him notice of the decision on the claim, he may not be removed from, or be required to leave, the United Kingdom". Schedule 2 to the 1993 Act specifically incorporates those provisions of the Immigration Act 1971 which prohibit the removal of an appellant while an appeal is pending.

22. There is a central government authority in the United Kingdom for deciding asylum cases and all applications are considered by trained

caseworkers. Each case is individually assessed against the Convention criteria, matters set out in the Immigration Rules and any other relevant factors. It is the normal practice to interview an asylum applicant and account is taken of all the relevant circumstances, including whether, in the country of origin, there is "a consistent pattern of gross, flagrant or mass violations of human rights". There is a detailed knowledge of those countries from which asylum is sought or which otherwise violate human rights: caseworkers receive advice from British diplomatic posts and regular country assessments from the Foreign and Commonwealth Office. A press clipping service is also available, together with the reports and analysis of particular countries produced by external agencies, such as the Office of the United Nations High Commissioner for Refugees and Amnesty International, and caseworkers attend various seminars, including talks by human rights experts and immigration lawyers.

23. Limited legal aid is available to asylum seekers, subject to their meeting the financial eligibility limits, and the Government funds an independent organization, the Refugee Legal Centre, which provides asylum seekers with free advice regarding their applications and, where necessary, represents them at appeal hearings.

24. As noted in paragraph 26 of the initial report, as well as those applicants who are recognized as refugees within the meaning of the 1951 Convention and are granted asylum, exceptional leave to remain in the United Kingdom may be granted to an individual who is not a refugee under the 1951 Convention and has no other claim to stay in the United Kingdom, but where there are compelling humanitarian reasons for not returning the individual to his country of origin. This may arise, for example, where there are substantial grounds for believing that the individual could be subjected to torture or inhuman or degrading treatment, even though this might not amount to persecution within the strict meaning of the 1951 Convention.

25. The United Kingdom is therefore satisfied that it meets its obligations under article 3 of the Convention: those who fall within the terms of article 3 and who would otherwise be required to leave the United Kingdom will either be recognized as refugees or granted exceptional leave to remain.

Articles 5 and 7

26. As described in paragraph 35 of the initial report, under section 134 of the Criminal Justice Act 1988 the offence of torture is committed whether the conduct takes place in the United Kingdom or elsewhere and whatever the nationality of the perpetrator and victim.

27. The United Kingdom has never refused to extradite a person whose return has been sought in respect of an offence of torture. (In fact, no such request has ever been received.) As a matter of domestic law, the extradition of United Kingdom nationals for any offence is not precluded; as a matter of policy, United Kingdom nationals are treated in exactly the same way as nationals of other countries. The extradition of a United Kingdom national would never be refused solely on grounds of nationality.

Article 9

28. The Criminal Justice (International Cooperation) Act 1991, to which paragraph 58 of the initial report referred, has now been fully implemented. This enabled the United Kingdom to ratify the European Convention on Mutual Assistance in Criminal Matters on 27 November 1991 and to participate fully in arrangements under the Scheme Relating to Mutual Legal Assistance in the Commonwealth. The Act is, however, available in relation to requests for assistance from foreign courts or prosecuting authorities even where the United Kingdom has no treaty obligations of this kind with the country concerned.

Article 10

29. All training programmes for law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment continue to emphasize the need to treat everyone as an individual and with humanity and respect and to act within the law at all times.

30. Training for the police service, for example, continues to address the statutory and common law provisions governing the rights of the individual. In particular, a programme of training in investigative interviewing has been introduced for all police officers in England and Wales; the concepts and methods contained in this programme give full recognition to the dignity and rights of the individual and are based on published ethical principles. A second training programme, aimed at the needs of those supervising interviews, is now being introduced.

31. All new prison officers in England and Wales receive a nine-week training course, in which they are taught the extent of their authority and are given detailed guidance on what behaviour is appropriate in dealing with prisoners; they also receive instruction on how to control and restrain prisoners in an approved manner. Recent developments in training concentrate on improving the relationship between prisoners and staff; increasing emphasis is placed on developing the care aspect of the prison officer's dual role of care and control and the initial training of prison officers therefore emphasizes the importance of interpersonal skills. All doctors, nurses and pharmacists who work in prisons are subject to the same codes of practice as those working in the community and receive additional training after recruitment to the Prison Service.

32. Immigration Service officers engaged in law enforcement work and in the detention of persons held under the provisions of the Immigration Act 1971 receive training in the extent and proper exercise of their powers and in racial awareness. Similar training is provided for private security staff operating on behalf of the Immigration Department and engaged in the detention or escorting of immigration detainees.

Article 11

Police powers in England and Wales

33. As described in paragraph 64 of the initial report, the powers of the police in England and Wales in the investigation of crime and the safeguards for the suspect are contained in the Police and Criminal Evidence Act 1984 and the four Codes of Practice (A to D) issued under section 66 of the 1984 Act, which cover stop and search; search of premises and seizure of property; the detention, treatment and questioning of suspects; and the identification of suspects.

34. Further to paragraph 64 of the initial report, the Police and Criminal Evidence Act 1984 (Tape Recording of Interviews) (No. 1) Order 1991 came into force on 1 January 1992. This required the tape recording at police stations in England and Wales of interviews with persons suspected of the commission of an indictable offence (that is an offence triable by jury in the Crown Court) (except certain indictable offences relating to terrorism or official secrets) in accordance with Code of Practice E on tape recording issued under section 60 (1) (a) of the 1984 Act. The requirement applied to all but one police force in England and Wales; the Police and Criminal Evidence Act 1984 (Tape Recording of Interviews) (No. 2) Order 1991 applying the requirement to that force came into effect on 9 November 1992. The Code requires the tape recording of interviews with a suspect at a police station under conditions strictly controlled to ensure the integrity of the tape. A master tape for use in any subsequent criminal proceedings is prepared under seal in the presence of the suspect and copies of the tape are made available to the defence and prosecution in advance of any court hearing.

35. In addition, between 1 December 1992 and December 1994 all interviews at police stations in England and Wales with those suspected of terrorist offences were, on a trial basis, tape recorded in much the same way as cases subject to Code of Practice E. The Government is considering, in the light of the outcome of this trial, whether to extend the benefit of the Code of Practice to terrorist cases.

36. Guidance on video recording of interviews with suspects was issued to police forces in England and Wales in February 1993. Forces were advised that, in view of the considerable resource implications for the whole criminal justice system, there were no plans to introduce widespread video recording of interviews with suspects on a similar basis to audio tape recording. The use of video recording equipment at force level is a matter for the individual chief officer of police. At present, only a limited number of forces make video recordings of interviews and these are generally restricted to serious and complex cases.

37. Arrangements have been introduced by all police authorities in England and Wales for members of the public to be appointed as lay visitors to police stations. Lay visitors make unannounced visits to police custody suites where they talk to detainees and monitor the application of the requirements of Code

of Practice C issued under section 66 of the Police and Criminal Evidence Act 1984, relating to the detention, treatment and questioning of suspects. Lay visitors report on their visits to the police, the local police authority and community groups.

Police powers in Scotland

38. Further to paragraph 65 of the initial report, which described how the powers of the police in Scotland and the safeguards for the suspect are established primarily under common law, non-statutory guidance on the tape recording of interviews with suspects in non-terrorist cases has been issued to all police forces in Scotland; all Scottish police forces record at least interviews conducted by their Criminal Investigation Department as a matter of routine. The Government is also considering, in consultation with the police and the Crown Office, the issues associated with the tape recording in Scotland of interviews with terrorist suspects with a view to determining what arrangements might be involved.

39. It is considered that there is no need for lay visiting to police stations in Scotland because prisoners are not held on remand in police cells and are generally held only overnight to appear in court the following day; existing arrangements, which allow for visits to police stations by members of police authorities and by the Scottish Prisons Inspectorate, are thought to provide an adequate safeguard.

Police and military powers in Northern Ireland

40. As described in paragraph 66 of the initial report, police powers in Northern Ireland in dealing with non-terrorist crime are similar to those in England and Wales; the Police and Criminal Evidence (Northern Ireland) Order 1989 contains largely equivalent provisions to the Police and Criminal Evidence Act 1984. Police procedures in dealing with such crime are similarly governed by statutory Codes of Practice; these came into force early in 1990. Tape recording of interviews with non-terrorist suspects has been introduced on a non-statutory basis; a statutory Code of Practice is in preparation. In addition, members of the public have been appointed as lay visitors to police stations in Northern Ireland; they make unannounced visits to police custody suites where those detained under the 1989 Order are held and report on their visits to the Police Authority for Northern Ireland.

41. As the Committee is aware, campaigns of organized terrorism related to the affairs of Northern Ireland have continued in the United Kingdom and particularly in Northern Ireland. The main republican terrorist organization, the Provisional IRA (Irish Republican Army), has aimed to force political change to create a united Ireland, involving the withdrawal of Northern Ireland from the United Kingdom. Over the years, the Provisional IRA has murdered and wounded many civilians as well as members of the police and armed forces. It has also sought to destroy the economic regeneration of Northern Ireland by periodically bombing city or town centres, and practises widespread intimidation, including vicious bodily attacks (such as "kneecapping" and other forms of "punishment shooting"), against individual members of the Roman Catholic community. As an indication of the extent of

its criminal activity, figures relating to the amount of compensation paid in recent years in respect of damage to property in Northern Ireland are set out in the table below:

Payments by the Compensation Agency

1990-91	£22,771,159
1991-92	£33,096,467
1992-93	£75,727,801

42. The Provisional IRA has derived some funds from activities such as smuggling and video piracy, which drain money from legitimate commerce in Northern Ireland and elsewhere. In general, however, it has raised money by exploiting the local community by, for example, extortion and creaming off profits from registered clubs, gaming machines and taxis. It has smuggled arms and explosives into the country and has developed its own weaponry, including mortars for attacking security force vehicles and bases. On 31 August 1994 the IRA declared what they described as a "complete cessation of military operations". Although the IRA have not yet confirmed that this cease-fire is permanent, the UK Government has decided to make a working assumption that permanence is intended.

43. So-called "loyalist" terrorist organizations include the Ulster Volunteer Force and the Ulster Freedom Fighters, which, like the Provisional IRA, are proscribed in Northern Ireland under the Northern Ireland (Emergency Provisions) Act 1991. They have been primarily involved in shooting attacks on Roman Catholics in Northern Ireland, either because they believed the victims to be connected with republican groups or, often, simply because they were Roman Catholics. Like the Provisional IRA, they have intimidated the local community by "punishment shootings" and other forms of violence and have derived income from extortion and racketeering. Figures showing the number of killings in recent years claimed by republican and loyalist terrorist organizations are set out in the table below:

	Republicans	Loyalists
1991	44	40
1992	34	40
1993	37	47

On 13 October 1994 the "loyalist" terrorist organizations announced that they too would cease operational hostilities, but made it clear that this was dependent upon a continuing republican cease-fire.

44. The Government deals with terrorism, from whichever extreme it comes, through the normal process of justice. In particular, terrorists are prosecuted only for the criminal offences they have committed, not for their beliefs. There are no political prisoners and there is no imprisonment without trial in open court. In response to the terrorist threat, however,

the Government has, since 1973, enacted certain additional powers and offences, which are currently contained in the Prevention of Terrorism (Temporary Provisions) Act 1989, which applies in Great Britain as well as Northern Ireland, and the Northern Ireland (Emergency Provisions) Act 1991. These are both temporary Acts whose operation is reviewed each year by an independent reviewer, currently Mr. J.J. Rowe QC, whose reports are published and the continuance of both Acts is subject to annual renewal by both Houses of Parliament. As well as being subject to annual parliamentary renewal, the 1991 Act has a maximum duration of five years. Mr. Rowe is currently conducting a fundamental review of the Act, which will be published and which the Government will consider carefully in determining whether such legislation remains necessary and, if so, the content of the replacement Act. HMG has made it clear in the past that, in the event of a genuine and established cessation of violence, the whole range of responses which have had to be made to that violence would be looked at afresh. While the need to protect UK citizens remains paramount, the cease-fire has already allowed the security forces in Northern Ireland to respond to the diminished threat.

45. Although a number of modifications have been necessary to legal procedures in Northern Ireland because of the nature of terrorism, the central principles of British justice apply: the onus is on the prosecution to prove guilt beyond reasonable doubt and the defendant has the right to be represented, if in need at public expense, by a lawyer of his own choice.

46. A comprehensive range of statutory and administrative safeguards is in place to ensure that those detained in Northern Ireland under the Prevention of Terrorism (Temporary Provisions) Act 1989 are treated in a manner fully consistent with the United Kingdom's human rights obligations; many of these were discussed in the memorandum attached to the letter of 28 April 1992 to the Chairman of the Committee, Mr. Voyaume, from the head of the United Kingdom delegation at the oral examination on the initial report. The main safeguards are set out below.

Codes of Practice

47. All persons arrested in Northern Ireland under the Prevention of Terrorism (Temporary Provisions) Act 1989 on reasonable suspicion of involvement in terrorist crime are dealt with strictly in accordance with the statutory Codes of Practice on the detention, treatment, questioning and identification of such persons made under section 61 of the Northern Ireland (Emergency Provisions) Act 1991. The purpose of the Codes is to ensure that police officers act at all times with due respect for the rights of persons in custody, having regard for any special needs, whilst at the same time complying with their obligations to prevent escapes and investigate crime. The Codes of Practice, a copy of which is attached at annex B, replaced previous non-statutory guidelines and came into force on 1 January 1994. Any police officer failing to comply with the requirements of the Codes is liable to disciplinary proceedings and the Codes of Practice are admissible in evidence in all criminal and civil proceedings. Codes of Practice relating to the powers of stop, search and seizure under the Northern Ireland (Emergency Provisions) Act 1991 and the Prevention of Terrorism (Temporary Provisions) Act 1989 are being considered.

Medical treatment

48. Under section 9 of the Code of Practice on detention, treatment and questioning, a person detained under the Prevention of Terrorism (Temporary Provisions) Act 1989 will be offered a medical examination, as soon as practicable, on his arrival at a police station or police office (the latter are also referred to as holding centres). If transferred to another police station or office, on release and at least once every 24 hours, the person will be offered a further medical examination.

49. If a detained person requests a medical examination, a medical officer must be informed as soon as practicable and arrangements made to conduct the examination; in addition, a detained person may be examined at his own expense by a medical practitioner from the practice with which he is registered. A medical examination must be carried out as soon as practicable and may only be delayed by the police custody officer in certain specified circumstances and only with the agreement of the officer in charge of the investigation and the medical officer. An examination by the detained person's own medical practitioner may only be delayed as long as is necessary and in no case longer than 48 hours from the time of arrest; the power of delay has not, however, been used in recent years.

50. If a person is required to take medication in compliance with medical directions, the custody officer is responsible for its safe keeping and for ensuring that the person is given the opportunity to apply or administer it at the appropriate times. Certain drugs may only be administered under the personal supervision of a medical officer.

51. Even if the detainee does not request it, a medical officer will be called if the detainee appears, by virtue of physical or mental illness or injury or other cause, to need medical attention.

Access to outside contact and legal advice

52. Under sections 44 and 45 of the Northern Ireland (Emergency Provisions) Act 1991, a person arrested under the Prevention of Terrorism (Temporary Provisions) Act 1989 has the right to have another person informed of his whereabouts, and to consult a solicitor, as soon as practicable following his arrest. The exercise of these rights may not be denied but may be delayed in certain circumstances, defined under the law. Delay may only be authorized by an officer of the rank of superintendent or above and only for as long as is necessary and up to a maximum of 48 hours from the time of arrest.

Review of detention

53. Under Schedule 3 to the Prevention of Terrorism (Temporary Provisions) Act 1989, where a person is detained under the Act, his detention must be reviewed periodically by an officer not directly involved in the case. The first review should be carried out as soon as practicable after the beginning of the detention. Subsequent reviews should be carried out at intervals of not more than 12 hours. The reviews must be carried out by an officer of the rank of inspector or, after 24 hours, a superintendent. He must be satisfied that continued detention is necessary and that the investigation is being

carried out diligently and expeditiously. He must offer the detainee the opportunity to make representations about his detention, and he must record the reasons for authorizing continued detention in the custody record.

54. The review officer is also required to inform the detainee of his right to have someone informed of his arrest, and his right of access to legal advice. Where this has been delayed in accordance with circumstances defined by law, the review officer is required to advise on whether the reasons for such a delay continue to apply. Continued detention without charge beyond 48 hours (and up to the statutory maximum of seven days) may only be authorized by the Secretary of State, but the vast majority of those arrested under the 1989 Act are either released or charged within two days.

55. The table below shows (by length of detention) the number of persons detained in Northern Ireland in 1993 under the Prevention of Terrorism (Temporary Provisions) Act 1989 and charged with a criminal offence or released without charge:

Length of detention	Number charged	Number released
Less than 2 hours	0	1
2 and less than 4	0	5
4 and less than 8	4	23
8 and less than 12	8	45
12 and less than 24	37	138
24 and less than 36	97	574
36 and less than 48	119	201
Total under 48 hours	265	987
2 days and less than 3	22	49
3 days and less than 4	35	103
4 days and less than 5	32	86
5 days and less than 6	8	9
6 days and less than 7	17	25
Total over 48 hours	114	272
Overall total	379	1 259

Closed-circuit television monitoring

56. The Government has concluded, after consultation with the Chief Constable of the Royal Ulster Constabulary, who is the principal security adviser to the Secretary of State for Northern Ireland, that the introduction of audio or video recording in police offices in Northern Ireland would not be in the overall interests of justice. In the particular circumstances of

Northern Ireland, the electronic recording of interviews would inhibit the chances of lawfully obtaining information that would lead to the conviction of terrorists or to the saving of other people's lives.

57. The position remains essentially as set out in the 1979 Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland (the Bennett Report), which concluded that video recording should not be introduced, but recommended that police interviews with terrorist suspects should be monitored by a uniformed inspector or chief inspector through the medium of closed-circuit television. The Committee is referred to page 3 of the memorandum attached to the letter of 28 April 1992 to its Chairman from the head of the United Kingdom delegation at the oral examination on the initial report.

58. All interviews with terrorist suspects at police offices in Northern Ireland, where those arrested under the Prevention of Terrorism (Temporary Provisions) Act 1989 are held, are continuously monitored on closed-circuit television by a uniformed inspector or chief inspector unconnected with the investigation.

Independent Commissioner for the Holding Centres

59. In December 1992, the Secretary of State for Northern Ireland appointed Sir Louis Blom-Cooper QC as the Independent Commissioner for the Holding Centres (also known as police offices). The role of the Commissioner is to observe, comment on and report on the conditions under which detainees are held and to ensure that both the statutory and administrative safeguards are being properly applied. The Commissioner may inspect all areas where detainees are held and the arrangements for closed-circuit television monitoring. He may also scrutinize custody records and, with their consent, may interview detainees abut their welfare and treatment. The Commissioner's first annual report to the Secretary of State was published in March 1994; a copy is attached at annex C. In the report the Commissioner concluded that he had found absolutely nothing that could give the slightest concern about the care and treatment of detainees in the custody of uniformed officers of the Royal Ulster Constabulary.

Arrest by the armed forces

60. Under section 18 of the Northern Ireland (Emergency Provisions) Act 1991, any member of Her Majesty's Forces on duty may arrest a person in Northern Ireland who he has reasonable grounds to suspect is committing, has committed or is about to commit any offence. It is the policy that, wherever practicable, any such arrest should be made by the police under their own powers and, in cases where it is necessary for a soldier to make an arrest, the arrested person should be handed over to the police as soon as possible. By law, persons arrested by the army must be handed over to the police within four hours or else released. Arrested persons are not questioned by soldiers, except for the purpose of establishing their identity or movements, or what they know concerning any recent explosion or other recent incident endangering life, or concerning any person killed or injured in such an explosion or incident. No further questioning or interrogation of arrested persons is

carried out by soldiers. To illustrate the small number of occasions on which soldiers exercise their power of arrest, the following figures are given:

Year	1990	1991	1992	1993
Arrests under section 18 of the 1991 Act (or its predecessor power)	63	108	55	87

Right of silence

61. During the oral examination on the initial report the Committee asked questions about the right of silence in the United Kingdom and, in particular, about legislation introduced in Northern Ireland in 1988 which allows inferences to be drawn by the courts from an accused person's silence when asked certain questions by the police or from his failure to give evidence in court when standing trial. Initial research conducted in 1990 into the effects of the order's right of silence provisions was of only limited value because of the absence of any pre-1988 data. A more comprehensive programme of research into the effects of the order has accordingly been commissioned. It will provide a fuller analysis of the operation and the effect of articles 3-6. The research is due to be completed in 1995.

62. Similar legislation has since been introduced for England and Wales in the Criminal Justice and Public Order Act, which became law on 3 November 1994. The aim of the legislation is to assist the investigation and prosecution of offences by allowing the courts to draw proper inferences from a person's silence in circumstances where he could reasonably be expected to offer an explanation - for example, when asked to account for certain objects, marks or substances found on or about his person at the time of arrest. The legislation will not compel a person suspected of an offence to answer questions, and any person detained by the police or appearing before the courts will have the choice to remain silent if he wishes. No inference could be drawn from a person's silence unless he has been warned, when questioned, about the risk of adverse comment and no person could be prosecuted or convicted unless there was independent evidence for his guilt, apart from silence.

63. The legislation does not constitute a change in the rules of evidence and will not affect the existing safeguards for persons detained and questioned by the police. The only substantial change in police practice in England and Wales will be the introduction of a new form of caution, to ensure that those questioned by the police are aware of the possible consequences of remaining silent. The proposed wording of the new caution is as follows:

> "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

64. The Government believes that this change in the rules of evidence will help the courts to reach rational conclusions on the facts of the case and will reduce the present emphasis on confession evidence. It will therefore reinforce current initiatives to foster police interview techniques which are designed to elicit the truth rather than putting pressure on suspects to answer questions.

65. These provisions do not apply in Scotland where the question of inferences from an accused person's silence is governed largely by the common law. The Government is considering whether to make changes to the existing law on the right to silence in Scotland.

Immigration detention centres

66. The provisions governing the detention of persons subject to immigration control and the relevant appeals procedures are contained in the Immigration Act 1971 and the Asylum and Immigration Appeals Act 1993. The power to detain is used as a last resort, when there are clear and positive grounds for believing that the person will not voluntarily comply with reporting requirements, and after all the known circumstances of the person concerned have been taken into account. Consideration of the cases of those detained is given the highest priority and the need for continued detention is regularly reviewed.

67. As noted in paragraph 75 of the initial report, the arrangements for the custody and treatment of persons detained in immigration accommodation, and the interview rules and procedures, are regularly reviewed. In addition, visiting committees have been appointed at the two immigration detention centres where detainees are held for more than a few days. The members are appointed by the Secretary of State and are recruited from various sources, nominations having been sought in the past from such organizations as the Council of Churches for Britain and Ireland, the Samaritans and the authorities responsible for local government. In addition to seeking to have representation from both sexes, efforts are made to recruit members from the ethnic minorities.

68. The role of the committees is to have regard to the welfare of the detainees and to offer advice on the running of the centres. Committee members have the right to enter the centres at any time, to go unaccompanied wherever they wish within the centres and to speak to anyone who wishes to speak to them or to whom they wish to speak, such interviews to be in private if desired. The committees appoint a rota visitor each week and he or she is expected to visit the centre at least once during that time and to take up any matters of concern with the Immigration Service at the centre. The committees meet once a month and are expected to submit an annual report to the Secretary of State on the running of the centres, such reports to include any advice or suggestions they may consider appropriate.

69. In addition, the Chief Inspector of Prisons in England and Wales (see para. 78, below) is invited to conduct inspections of these long-term immigration detention centres. Such inspections have already been conducted at Harmondsworth Detention Centre and at Campsfield House Detention Centre, which opened in November 1993.

Mental health

70. Further to paragraphs 83 to 95, 103 and 137 to 139 of the initial report, the treatment of people detained in England and Wales under the Mental Health Act 1983 and in Scotland under the Mental Health (Scotland) Act 1984 continues to be monitored by, respectively, the Mental Health Act Commission and the Mental Welfare Commission for Scotland, which are independent statutory bodies. All detained patients are offered the opportunity of an interview in private when the commissioners visit hospitals. Similar provisions apply in Northern Ireland; the Mental Health (Northern Ireland) Order 1986 provides that the Mental Health Commission for Northern Ireland keep under review the care and treatment of all mentally disordered patients.

Prison conditions

71. The Government remains committed to providing decent conditions for prisoners and eliminating overcrowding. The largest prison building programme in England and Wales since Victorian times has been completed with 21 new prisons having opened since 1985. The most recent prison, at Doncaster, opened in June 1994 bringing the number of new places provided since 1985 to a total of 11,285, at a cost of over £1,200 million. In addition, 7,500 places have been provided at existing establishments since 1979. Another six new prisons are to be designed, constructed, managed and financed by the private sector. The first two are expected to open in 1997-1998.

72. As a consequence of the building programme, at the end of October 1994, 83 per cent of prisoners in England and Wales were being held in uncrowded conditions. In 1987-1988, over 5,000 prisoners were being held three to a cell designed for one person, this practice has now been eliminated, while the number of prisoners held two to a cell designed for one person has been halved from over 17,800 in January 1987 to some 8,600 in October 1994.

73. Refurbishment and modernization of existing establishments continues to be an important part of the building programme, providing enhanced security and control measures and upgraded facilities, including access to sanitation at all times. By the end of 1994, 95 per cent of prisoners had access to sanitation at all times; and it is intended that all prisoners should have such access by February 1996. In 1994/95, the Prison Service in England and Wales will be completing the modernization of 14 wings at older, Victorian prisons and beginning work at another 8 establishments.

74. During the oral examination on the initial report (CAT/C/SR.91, para. 9), the United Kingdom delegation reported the publication, in September 1991, of a White Paper, "Custody, Care and Justice" (Cm 1647), following Lord Woolf's report into the prison disturbances which took place in England and Wales in 1990. The White Paper sets out a programme of work for the Prison Service into the next century. In line with a government commitment in the White Paper, the Prison Service introduced in April 1994 a code of operating standards, which covers areas such as food, clothing, health, discipline, regimes, accommodation, security and preparation for release. The code represents the Prison Service's national standards, towards which all prisons will, over time, be required to work.

75. In Scotland, a new 60-place houseblock, or prisoner accommodation hall, is to be constructed at Greenock during 1995 and new houseblocks are planned at Dumfries and Polmont. In April 1994, 56 per cent of prison places had access to various forms of night sanitation. The programme to provide access to sanitation at all times is continuing, with major works currently in progress at Dumfries Prison and further work is scheduled to start in 1995 at Edinburgh and Barlinnie.

76. A prison survey was undertaken in Scotland in 1990/91 consulting prisoners on their views on aspects of prison management, facilities, conditions and relationships; the survey was repeated in 1993/94 and the results compared with a view to identifying changes occurring in establishments. An information pack for prisoners was distributed in late 1994; it is suitable for all categories of prisoner and provides useful information on issues concerning prisoners' rights and welfare.

77. In Northern Ireland, the prison estate is small: there are four prisons and one young offenders centre. With the exception of Belfast Prison, no part of the prison estate is more than 20 years old. A major refurbishment of Belfast Prison had been planned to include provision of integral sanitation and other improvements. However, considerable damage was done to the prison during violent disturbances there in July 1994. As a result, all paramilitary prisoners being held on remand were transferred to HM Prison Maze, and it was decided that these prisoners will not be returned to HM Prison Belfast in the short term. Against this background, and in view of the substantial costs involved in the scheme for refurbishing HM Prison Belfast, the Controller of Prisons appointed a working party which conducted a comprehensive review to consider how best use can be made of the prison estate and consider options for the future deployment of prisoners within the estate whilst also taking into account the best use of capital and manpower resources. The cost of refurbishing existing accommodation at Belfast Prison to the required standard is estimated at £34 million and the preferred option would be closure of Belfast and expansion of facilities on the site at Maghaberry Prison. However work is currently being carried out to prepare a detailed investment appraisal of the options before a final decision is taken on Belfast Prison's future.

Prison inspection

78. The independent Inspectorate of Prisons in England and Wales, of which the Chief Inspector is Judge Stephen Tumim, continues to carry out inspections of individual Prison Service establishments and to report to the Government on the treatment of and conditions for prisoners; the report of each inspection is published. The Inspectorate also carries out reviews of general aspects of the work of the Prison Service and investigates particular incidents at the Government's request. In addition, the annual report of the Inspectorate is laid before Parliament.

79. The Inspectorate of Prisons in England and Wales is also invited to conduct inspections in Northern Ireland, while, in Scotland, there is a separate, smaller Prisons Inspectorate with its own Chief Inspector. Its duties are similar to those of the Inspectorate in England and Wales: cyclical inspections of and reports on individual establishments, studies of general aspects of the work of the Scottish Prison Service and any particular

investigations which the Government may request. In addition, it is responsible for the inspection every three years of the police cells used in isolated areas to hold prisoners awaiting trial locally or transfer to a main prison.

Suicide prevention

80. The table below sets out the number of self-inflicted deaths in prisons in England and Wales in recent years:

	Male	Female	Total
1988	37	-	37
1989	46	2	48
1990	49	1	50
1991	42	-	42
1992	39	2	41
1993	46	1	47
1994*	40	1	41

* to 30 September 1994.

81. These figures are set out by age of prisoner in the table below:

	1988	1989	1990	1991	1992	1993
15-16	-	-	2 (4%)	1 (2%)	1 (2%)	-
17-20	9 (24%)	12 (25%)	8 (16%)	4 (10%)	6 (15%)	3 (6%)
21-25	8 (22%)	14 (29%)	7 (14%)	10 (24%)	15 (37%)	10 (21%)
26-30	7 (19%)	10 (21%)	13 (26%)	8 (19%)	7 (17%)	12 (26%)
31-35	2 (5%)	5 (10%)	5 (10%)	7 (17%)	3 (7%)	6 (13%)
36-40	4 (11%)	1 (2%)	8 (16%)	4 (10%)	5 (12%)	8 (17%)
41-45	2 (5%)	2 (4%)	1 (2%)	5 (12%)	2 (5%)	5 (11%)
46-50	2 (5%)	1 (2%)	2 (4%)	1 (2%)	1 (2%)	1 (2%)
51-55	2 (5%)	2 (4%)	3 (6%)	2 (5%)	1 (2%)	1 (2%)
56-60	-	1 (2%)	1 (2%)	-	-	1 (2%)
60+	1 (3%)	-	-	-	-	-
Average age	28.8	27.3	30.9	31.0	28.9	31.3

82. During the oral examination on the initial report (CAT/C/SR.92, para. 53) the United Kingdom was invited to monitor the conditions of detention of persons with suicidal tendencies. The United Kingdom wishes to draw the

Committee's attention to the fact that the Prison Service in England and Wales has devoted considerable effort to identifying and monitoring prisoners who are considered to be at risk of suicide. In February 1994, a national instruction and guidance pack were issued and are attached at annex D. These set out revised and updated policies and procedures, which include reception screening, referral for medical assessment and the provision of a wide range of counselling and support services, such as volunteer befrienders. The voluntary sector Trust for the Study of Adolescence assisted in the formulation of the new policies and procedures in order to ensure that they were appropriate to juveniles.

83. Responsibility for implementing the instruction lies with the governor of each establishment, who is supported by a local, multi-disciplinary suicide awareness team. The team reviews procedures, monitors incidents of self-harm and develops good practice in the care of those at risk of suicide. All Prison Service staff receive training in suicide awareness and a major training initiative is currently being undertaken to introduce the new procedures.

84. A central Suicide Awareness Support Unit advises establishments on all aspects of suicide management and is evaluating the revised policies. In addition, as noted in paragraph 78 above, all establishments are subject to independent inspection by the Inspectorate of Prisons, the reports of which comment on suicide prevention measures. Conditions of detention are also regularly monitored by the Board of Visitors at each establishment.

85. Between 1981 and 1992 there were 67 self-inflicted deaths in Scottish prisons; 18 of the prisoners were young offenders. The Scottish Prison Service launched its suicide prevention strategy in April 1992, when a guidance manual was issued to staff setting out the Service's policy on helping prisoners overcome suicidal tendencies and giving detailed instructions on the procedures to be followed. All staff are trained in suicide prevention as part of their initial training and the strategy is reviewed annually to determine whether changes are required as a result of operational experience.

86. The table below sets out the number of self-inflicted deaths in prisons in Northern Ireland in recent years:

	Male	Female	Total
1988	2	-	2
1989	1	-	1
1990	1	-	1
1991	1	-	1
1992	-	-	-
1993	-	-	-
1994*	2	-	2

* to 22 August 1994.

87. These figures are set out by age of prisoner in the table below:

	1988	1989	1990	1991	1992	1993	1994
16-20	1 (50%)	-	-	-	-	-	-
21-25	1 (50%)	-	-	-	-	-	1 (50%)
26-30	-	-	-	-	-	-	1 (50%)
31-35	-	1 (100%)	1 (100%)	1 (100%)	-	-	-
Average age	20.5	31	31	32	-	-	25.5

88. In 1991, the Northern Ireland Prison Service produced a suicide awareness and prevention manual, which, for example, provides guidance on how prisoners facing a personal crisis can be identified and supported through their difficulties. Each prison establishment and the young offenders centre in Northern Ireland has a suicide prevention management group, which meets on a regular basis, and staff training needs are regularly reviewed. A general review of suicide awareness and prevention policy is planned for later this year.

89. The most recent suicide in an immigration detention centre occurred in 1990, but there have been a number of attempted suicides in recent years. Suicide awareness and self-injury prevention training and written guidance are provided for Immigration Service officers and for private security staff operating on behalf of the Immigration Department. In addition, the Samaritans, the suicide prevention organization, have a nominee on the visiting committees which have been appointed at the two immigration detention centres where detainees are held for more than a few days and which are described at paragraphs 66-67 above. Information about the Samaritans is published within the centres and use is made by detainees of the service that the organization provides. Both centres are seeking to establish a direct, confidential telephone link that detainees may use in contacting the local Samaritans organization.

Articles 12 and 13

90. For convenience, all matters relating to the discipline of prison staff, police officers and members of the armed forces and to complaints against them are dealt with under these articles.

Prison staff discipline and prisoners' complaints in England and Wales

91. Paragraphs 80, 81 and 97 to 101 of the initial report set out the procedures for making and investigating complaints against members of the Prison Service in England, Wales and Scotland. A further development in the handling of formal complaints from prisoners has been the appointment of a Prisons Ombudsman by the Government in April 1994. The Prisons Ombudsman will consider grievances from prisoners, including those about disciplinary offences, once all internal procedures have been exhausted. The Ombudsman will rely on powers to make recommendations to the Prison Service and, where necessary, the Home Secretary. The remit of the post includes prisons

contracted out to the private sector, contracted-out services within prisons and the actions of those working in prisons who are not employed by the Prison Service.

92. The Prisons Ombudsman will examine the merits of individual cases as well as the operation of procedures. All matters affecting prisoners will be within the Ombudsman's remit, except for those which are the subject of litigation or criminal proceedings and for actions of individuals or bodies outside the Prison Service (e.g. the courts, police, Immigration Service, Department of Social Security and the Parole Board - but boards of visitors will be included). The inclusion within the post's remit of the clinical judgement of prison doctors will, however, be subject to discussions with the Chief Medical Officer and with medical professional bodies. Ministers' exercise of their function in considering the release of mandatory life sentence prisoners will not be within the Prisons Ombudsman's remit, but the Ombudsman will be able to review related administrative action by the Prison Service. There will be tight time limits for all major stages of the Ombudsman's work in dealing with complaints.

93. The Prisons Ombudsman will have unfettered access to Prison Service documents, establishments and individuals. In exceptional cases the Ombudsman will have to withhold information from complainants and the public in the interests of national security, or to safeguard particular security measures, or to protect a third party or to safeguard the mental or physical health of a prisoner.

94. The Prisons Ombudsman's office will be independent of Prison Service headquarters. It will include three assistant ombudsmen, all appointed on contracts, and nine support staff seconded from the Home Office. The Prisons Ombudsman will report annually to the Home Secretary and a shorter version of the report will be published. The appointment of the Ombudsman will not in any way affect prisoners' rights to approach the Parliamentary Commissioner for Administration, nor will it restrict their freedom to pursue complaints in any other way.

95. Paragraph 157 of the initial report noted that all staff working in prisons, remand centres and young offender institutions are subject to the criminal law. Were prima facie evidence to exist of a criminal offence against an inmate's person or property, the police would be invited to investigate. Conviction for such an offence would normally result in dismissal, in addition to any penalty imposed by the court.

96. Staff are also subject to internal disciplinary procedures. These were extensively revised in July 1993 and the main features are as follows:

(a) A common standard of conduct has been laid down for all staff working in prison establishments and at Prison Service Headquarters and Units;

(b) All staff are liable to face disciplinary proceedings if they fail to meet that standard; and

(c) The standard of proof in disciplinary proceedings is the balance of probabilities.

The standard of conduct, in relation to inmates, requires that all members of staff must be: "Courteous, reasonable and fair in their dealings with all inmates ... irrespective of race, religion, gender, disability, sexual orientation or any other irrelevant factor".

97. The Prison Service Code of Discipline gives prison governors the power to award a range of disciplinary penalties, which are primarily designed to improve the performance of individual members of staff. The penalties available include warnings, financial restitution, loss of increment, removal from the field of promotion, downgrading and dismissal. In the event of a failure to show an improvement, or in cases of further acts of indiscipline, governors have the power (subject to a right of appeal) to dismiss members of staff. They may also dismiss staff for a single act of gross misconduct.

Prison staff discipline and prisoners' complaints in Scotland

98. Paragraphs 80, 81 and 97 to 101 of the initial report set out the procedures for making and investigating complaints against members of the Prison Service in England, Wales and Scotland. In February 1994, the Scottish Prison Service introduced a new internal complaints system for dealing with prisoners' requests and complaints. The objectives of the new procedures are to ensure that:

(a) Requests and complaints are resolved as close as possible to the source of the matter at issue;

(b) Those who take decisions are accountable for them;

(c) Prisoners receive reasoned responses within a set timescale; and

(d) Accurate and detailed records are maintained.

99. When allegations of criminal conduct by prison staff against prisoners are reported to the Procurator Fiscal, he must investigate the complaint and arrange for the prisoner to be interviewed. Requests and complaints are dealt with initially within the prison hall in which the prisoner is located. Issues which cannot be settled within the hall are referred to an internal complaints committee. Prisoners have the right to appear in person before the committee and have the right to seek the assistance of a member of staff or of an individual connected with the prison, such as a social worker or a member of the visiting committee of independent lay persons. Whenever possible, the committee informs the prisoner at the hearing of its decision. If a decision is not taken at that time, the prisoner receives a written reply within two days of the hearing. Prisoners have the opportunity to appeal against the committee's decision to the governor in charge, who will normally deal with such appeals within seven days. If, after the governor has given his decision, the prisoner wishes to take the matter further, he will have the opportunity to appeal to the Scottish Prisoners Complaints Commissioner. Prisoners will be provided with reasoned written decisions at each stage of the proceedings. Prisoners will continue to have access to all the external avenues of complaint which are available at present.

100. Paragraph 98 of the initial report mentioned that a comprehensive review of the Prison Rules was being undertaken in Scotland. This has been completed and the new Rules were laid before Parliament in July 1994 and the vast majority of the provisions came into force on 1 November 1994. The new Rules abolish the disciplinary offences of making a false and malicious allegation against an officer and of repeatedly making groundless complaints. They also abolish the so-called "simultaneous ventilation rule", which required prisoners to put forward their grievances within the internal complaints system at the same time as any letter of complaint might be written to persons or bodies outside the prison system.

Prison staff discipline and prisoners' complaints in Northern Ireland

101. A review of the Prison Rules in Northern Ireland began in August 1993 and draft Rules were published for public consultation in April 1994. The consultation period ended in June 1994 and the Prison and Young Offenders Rules (Northern Ireland) 1995 will come into force in March 1995. These rules replace both the Young Offenders Rules (Northern Ireland) 1982 and the Prison Rules (Northern Ireland) 1982 both of which were revoked from that date. New Standing Orders which give effect to the new Rules will be introduced in March 1995.

Police discipline and complaints in England and Wales

102. Paragraphs 141 to 143 and 146 to 152 of the initial report described the procedures established under the Police and Criminal Evidence Act 1984 for handling complaints against the police in England and Wales and considering disciplinary action. These procedures remain in force and the Police Complaints Authority continues to exercise independent oversight of individual cases.

103. Detailed figures of complaints against the police are published each year in a Home Office Statistical Bulletin and the Annual Report of the Commissioner of the London Metropolitan Police. Although the number of complaints made in recent years has shown a slight rise - of 6.5 per cent in four years, some of which is due to changes in recording practice - the number of complaints substantiated has remained about the same:

	1989	1990	1991	1992	1993
Complaint cases received	20 956	21 284	20 688	21 733	22 327
Complaints substantiated	765	847	813	760	756

104. As explained in paragraph 152 of the initial report, the action taken following the completion of the investigation into a police complaint is subject to review by the Police Complaints Authority, which may recommend or direct disciplinary action if it considers this the right course and no such action is proposed by the police force in question. The table below gives figures taken from the Authority's annual reports for recent years:

Year	Complaints a/	Disciplinary charges b/
1989	9 014	193 (54)
1990	13 679	219 (69)
1991	13 945	245 (73)
1992	13 234	252 (56)
1993	10 907	236 (45)

a/ This column gives figures for complaints where the subsequent disciplinary action proposed was reviewed by the Police Complaints Authority after the complaints had been fully investigated.

b/ Total disciplinary charges arising from these complaints. Figures for PCA recommendations or directions that disciplinary charges be brought are given in brackets.

105. In 1993, statistics were collected, for the first time for some years, in which the number of police officers convicted of a criminal offence was broken down by offence. Six officers were convicted of violence against the person (two as a result of a complaint), two being imprisoned. Two officers were convicted of perjury, one (convicted as a result of a complaint) being imprisoned. There were no other convictions of police officers for violence or malpractice.

106. The Police and Magistrates' Courts Act 1994, which should come into force towards the end of 1995, makes certain changes to the police disciplinary procedures. The role of the Police Complaints Authority will remain largely unchanged under the new procedures, although complaints about less serious matters (not, for example, involving allegations of assault or corruption but covering such matters as incivility or poor time-keeping) will, in future, be dealt with as part of the chief officer's normal management responsibility for the police force.

107. Serious misconduct by a police officer towards a member of the public will usually involve a criminal offence and will continue to be dealt with as such. The main issue to be resolved in other allegations of misconduct is whether an officer has acted in a way appropriate to his office. New disciplinary procedures will concentrate on determining whether an officer is fit to remain in the police service.

Police discipline and complaints in Scotland

108. Further to paragraph 153 of the initial report, in 1993, 364 police discipline cases were dealt with under the code set out in Schedule 1 to the Police (Discipline) (Scotland) Regulations 1967; 73 of these proceeded to a disciplinary hearing, the outcome of which was that 72 officers were found guilty of a disciplinary offence.

109. Of the cases that did not proceed to a disciplinary hearing, the majority resulted in counselling by a senior officer, a number were found to be unsubstantiated and in some cases the officer resigned before disciplinary procedures were completed.

110. The Police and Magistrates' Courts Act 1994 will make changes to police disciplinary procedures in Scotland similar to those to be made in England and Wales. It will, however, continue to be the responsibility of the chief constable of the police force concerned to report any suspected criminal conduct on the part of one of his officers to the Procurator Fiscal, who will decide whether proceedings should be taken against that officer. The Act will also empower inspectors of constabulary in Scotland to consider representations from complainants dissatisfied with the way in which the police have handled their complaint and, where appropriate, to direct the chief officer of the police force concerned to re-examine the case.

Police discipline and complaints in Northern Ireland

111. Paragraphs 155 and 156 of the initial report described how the procedures for handling complaints against the police in Northern Ireland are established under the Police (Northern Ireland) Order 1987 and how independent oversight of the complaints and discipline system is exercised by the Independent Commission for Police Complaints for Northern Ireland.

112. Detailed figures of complaints against the police are published each year in the Annual Report of the Chief Constable of the Royal Ulster Constabulary and in the Annual Report of the Independent Commission for Police Complaints. There has been an increase of about 10 per cent in the number of complaints made in recent years, but the number of complaints substantiated has remained about the same:

	1989	1990	1991	1992	1993
Complaints received	3 989	4 132	4 364	4 663	4 455
Complaints substantiated	56	61	48	46	42

113. The Independent Commission for Police Complaints must supervise the investigation of all complaints alleging death or serious injury and may choose to supervise the investigation of any other complaint. In 1993, the Commission completed the supervision of 248 cases.

114. The action taken following the completion of the investigation into a police complaint is subject to review by the Independent Commission for Police Complaints, which may recommend or direct disciplinary action if it considers this the right course and no such action is proposed by the police. Details of the instances of disciplinary charges are listed below:

Year	Complaints a/	Disciplinary charges b/
1989	803	14 (12)
1990	888	29 (14)
1991	971	27 (19)
1992	1 105	39 (27)
1993	1 209	25 (15)

a/ This column gives figures for complaints where the proposed disciplinary action was reviewed by the ICPC.

b/ Total disciplinary charges arising from these complaints. Figures for ICPC recommendations or directions that disciplinary charges be brought are given in brackets.

115. If, following the investigation of a complaint, there are allegations of possible criminal conduct, these are passed to the independent Director of Public Prosecutions for Northern Ireland, who decides whether criminal charges should be brought. In 1993, the Director of Public Prosecutions decided that criminal charges arising out of complaints should be brought against six RUC officers.

116. A number of specified cases of alleged ill-treatment were referred to in the 1991 Amnesty International report. A number of these are still undergoing investigation or are subject to legal proceedings. It is hoped to provide a full report of each case in the near future.

Military discipline and complaints in Northern Ireland

117. The RUC is responsible for maintaining law and order in Northern Ireland. The armed forces operate in Northern Ireland to support the RUC in defeating terrorism within the law.

118. Any complaint against a member of the armed forces alleging criminal behaviour is investigated by the police and not by the armed forces themselves. It is the policy of the armed forces to cooperate fully with any such investigation. In addition, any member of the public has the right to bring a civil action against a soldier in respect of any alleged criminal act.

119. Steps have been taken to make it easier for a member of the public to make a complaint against a member of the armed forces. A revised leaflet has been published, which is widely available, setting out how to make a complaint (a copy is attached at annex E). In addition, each four-man team of the armed forces operating in support of the police carries a "patrol identification card", which uniquely identifies the patrol and is handed to any member of the public who may wish to make a complaint. This facilitates any subsequent investigation which may be necessary, whether by the civil police (if the allegation is criminal) or by the military authorities (if it is non-criminal).

120. In order to provide an independent audit of the procedures for handling non-criminal complaints against the armed forces in Northern Ireland, section 60 of and Schedule 6 to the Northern Ireland (Emergency Provisions) Act 1991 provides for the Secretary of State for Northern Ireland to appoint an Independent Assessor of Military Complaints Procedures in Northern Ireland; Mr. David Hewitt was appointed by the Secretary of State in December 1992. The Independent Assessor reviews and makes recommendations concerning the procedures adopted by the General Officer Commanding Northern Ireland (the GOC) for receiving, investigating and responding to relevant complaints. He is obliged to receive and investigate representations concerning those procedures and may investigate their operation. The Independent Assessor may also require the GOC to review any particular case in which he considers any of those procedures to have operated inadequately and may make recommendations to the GOC concerning such inadequacies either on a general basis or in relation to a particular complaint.

121. The Independent Assessor's first annual report to the Secretary of State was published in May 1994. In it the Assessor stated his belief that military complaints procedures in Northern Ireland are as thorough as any in the world and acknowledged that those procedures have helped to establish and maintain a good and improving relationship between the armed forces and the people of Northern Ireland. He also made a number of suggestions for further improvement; these suggestions have been examined carefully by the army and all but two of the recommendations have now been implemented. A copy of the report, which contains full statistics, is attached at annex F.

Article 14

122. Paragraphs 107 to 120 of the initial report described the statutory and common law provision in the United Kingdom regarding compensation and damages for any victim of crime or of a civil wrong and the measures in place for the rehabilitation of victims. The following supplementary information is now provided.

Compensation

123. Paragraph 107 of the initial report described the legislation in England and Wales under which the courts may order convicted offenders to pay compensation to their victims. The Criminal Justice Act 1991 increased the maximum amount of compensation which can be ordered on summary conviction for a single offence from £2,000 to £5,000.

124. Paragraph 109 of the initial report described the provision in Great Britain of compensation for the victims of crimes of violence, or their dependents, made under the Criminal Injuries Compensation Scheme. Such compensation continues to be paid under arrangements which amount to some of the most generous in the world, awarding more compensation than the rest of Europe combined and more than the United States, which has a higher level of crime.

125. A separate scheme, described in paragraph 110 of the initial report, continues to operate in Northern Ireland.

Rehabilitation measures

126. Paragraph 119 of the initial report described the help available to victims of crime through Victim Support, a voluntary organization which receives substantial government funding. Victim Support's activities have widened and there are now some 370 local schemes in England and Wales, which help more than 900,000 victims a year. Government funding for Victim Support is £8.4 million in 1993/94 and will be £10 million in 1994/95. This funding helps to support the organization's national headquarters and meets the salaries of paid coordinators for the local schemes and for the recently introduced Crown Court Witness Service. This service, now established in nearly 40 Crown Court centres in England and Wales, provides practical and emotional help for witnesses attending court.

127. There are also some 70 local victim support schemes in Scotland, which help more than 40,000 victims a year. Government funding to Victim Support Scotland in 1994/95 will be £878,000, of which £622,000 will be allocated to a funding panel, independent of the Scottish Office and of Victim Support Scotland, which determines applications for grants submitted by local victim support schemes. The intention is to encourage the growth of local schemes affiliated to the Scottish Association of Victim Support Schemes through the provision of grant aid for the appointment of coordinators or towards running costs.

Article 15

128. Paragraphs 121 to 123 of the initial report described how under statutory and common law a confession which may have been obtained by oppression is inadmissible in the United Kingdom as evidence against the person who made the confession; during the oral examination on the initial report (CAT/C/SR.92, paras. 13-14) the United Kingdom delegation expanded on this description and explained how article 15 was applied with respect to witness statements.

Article 16

129. Matters relating to the discipline of prison staff, police officers and members of the armed forces and to complaints against them are dealt with under articles 12 and 13.

Corporal punishment

130. The Education (No. 2) Act 1986 and an Order in Council for Northern Ireland abolished the use of corporal punishment in all State maintained schools. The law also exempts from corporal punishment publicly funded pupils in independent schools.

131. In practice, very few independent schools now administer corporal punishment, but the Government is concerned to ensure that, in those which choose to do so, any punishment does not lead to a contravention of article 16 or of other of the United Kingdom's international obligations. The Education Act 1993, which came into force on 1 October 1993, therefore provides that, where corporal punishment is administered to privately funded pupils in

independent schools, the punishment should not be "inhuman or degrading". The legislation provides that, in determining whether punishment is inhuman or degrading, regard should be had to all the circumstances of the case, including the reason for giving the punishment; how soon after the event it is given; its nature; the manner and circumstances in which it is given; the persons involved; and its mental and physical effects on the pupil concerned.

132. In September 1992, the European Court of Human Rights heard the case of Costello-Roberts v. the United Kingdom, which related to the use of corporal punishment in an independent school. The Court ruled that the United Kingdom was not in breach of either article 3 (torture and inhuman or degrading treatment or punishment) or article 8 (right to privacy) of the European Convention on Human Rights.

Care and protection of children

133. As the United Kingdom delegation described during the oral examination on the initial report (CAT/C/SR.91, para. 11), the Children Act 1989, which came into force in October 1991, revised and clarified the law in England and Wales relating to the care and upbringing of children. Based on the principle that the welfare of the child must always be the first consideration in decisions by the courts and by the authorities responsible for local government, it included new measures to help protect children from abuse and required the setting up of monitoring and complaints procedures for residential children's homes.

134. The working of the 1989 Act is being monitored through a national network of Family Business and Family Services Committees, which report to a multi-disciplinary central body, the Children Act Advisory Committee. The Committee reports annually to the Government on the operation of the Act and makes recommendations about any changes required. In addition, the Government is required under the 1989 Act to lay before Parliament each year information about local authority functions relating to children, about certain services for children provided by the voluntary sector.

135. In Scotland, the Social Work (Scotland) Act 1968 embodies similar principles concerning the rights of the child to those that apply in England and Wales, while, in August 1993, the Government published a White Paper, "Scotland's Children: Proposals for Child Care Policy and Law" (Cm 2286), from which it is hoped to promote further legislation relating to children and families. In Northern Ireland, the Government published a new framework for child-care law for public consultation in 1993 and legislation is expected to be introduced early in 1995 which would bring together the civil law relating to the care and protection of children in a single, comprehensive code along the lines of the Children Act 1989 in England and Wales.

136. Under the Children Act 1989, local authorities in England and Wales now have a statutory duty to make enquiries if they receive information suggesting that a child may need protection or family support services. A similar duty is placed on local authorities in Scotland by the Social Work (Scotland) Act 1968, while, in Northern Ireland, health and social services boards and trusts have a statutory responsibility for the care and protection of children who may be at risk of abuse.

137. In October 1991, to coincide with the implementation of the Children Act 1989, a revised version of the Government's inter-agency child protection guidance for England and Wales - "Working Together under the Children Act 1989" - was issued and, in 1992, the Government published a revised version of professional guidance for nurses and has also provided practice guidance to social workers involved in the assessment of child abuse cases and guidance to all doctors on the diagnosis of child sexual abuse. In Northern Ireland, the government publication, "Co-operating to Protect Children", provides guidance on the prevention, detection and management of child abuse.

138. As mentioned in paragraph 132 of the initial report, in October 1986 the Government launched a central training initiative in England and Wales for the training of managers and practitioners in child abuse work. Grants totalling over £3.5 million have been given to produce child protection training materials for those in different professional disciplines and awareness materials for the wider public. The Government has also funded a survey to establish the nature and range of treatment facilities for abused children and for young perpetrators of abuse, which informed the deployment of resources, from 1990, in a centrally funded treatment initiative. At the end of 1993/94, nearly £1.1 million had been provided in grants for a range of child abuse treatment projects. In addition, as part of the Government's overall child care research programme, there is in place an extensive range of research projects in relation to child abuse. In Northern Ireland, a special training initiative, launched in September 1988 for health and social services boards staff involved in dealing with child abuse, provides funds of £100,000 a year.

139. Further to paragraph 133 of the initial report, at local level, each local authority social services department in England and Wales holds a central register which lists all the children in the area who are considered to be at risk of abuse and who are therefore currently the subject of an inter-agency plan to protect them. (Registration takes place as a result of a child protection conference, which decides whether a child is at risk of abuse and whether the child's name should be placed on the register. If the child's name is placed on the register, the conference also draws up an inter-agency plan to protect the child.) Since 1989 the Government has produced an annual statistical publication on children and young people on child protection registers in England containing both national and local information. Similar arrangements are in place in Wales, Scotland and Northern Ireland.

Residential care for children

140. Paragraph 159 of the initial report described how all residential care for children in England and Wales is subject to inspection by Social Services. New regulations and guidance on the management of children's homes, emphasizing the need to promote the welfare of the child and guard against ill-treatment, have been issued in accordance with the Children Act 1989. Such homes are required to have a publicized complaints procedure with an independent element and to which children can have access in their own right. Children must also have access to a pay telephone which they can use to make and receive telephone calls in private.

141. In April 1993, the Government issued guidance to local authorities on the permissible forms of control in children's residential care; this makes clear the circumstances in which it is appropriate to use physical restraint in order to protect a child from himself or others or from causing serious damage to property. It is the Government's policy that corporal punishment has no place in the child-care setting, whether in children's homes, day care facilities or foster placements. Because of the particular vulnerability of children in residential care, more extensive and detailed regulations and guidance concerning control and discipline apply; only such disciplinary measures as are approved by the responsible authority may be used and detailed records must be kept of any punishment administered.

142. A sum of £4.5 million is being made available in 1994/95 for a special residential child-care initiative, which started in 1992 and which is aimed at assisting local authorities to ensure that all children's homes are managed by professionally qualified staff. A further £11.4 million is available under the Training Support Programme in 1994/95 for all local authority staff working with children, in residential care and in the community. This programme aims to improve the quality of social services provision by increasing the availability of training for relevant staff. For both these initiatives, local authorities are required to contribute at least 30 per cent of expenditure themselves.

143. All residential care for children in Scotland is subject to local authority registration and inspection, while, in Northern Ireland, where the health and social services boards have a responsibility to provide residential accommodation for children taken into their care, such accommodation is subject to inspection by the Social Services Inspectorate.

Secure accommodation for children

144. The primary legislation governing the provision and use in the United Kingdom of secure accommodation for children is contained in the Children Act 1989; the Social Work (Scotland) Act 1968 and the Criminal Procedure (Scotland) Act 1975; and the Children and Young Persons Act (Northern Ireland) 1968. All secure accommodation is subject to Government approval and to independent inspection, which reports on the quality of care provided and the condition of the premises.

Part Two

CROWN DEPENDENCIES: GUERNSEY, JERSEY AND THE ISLE OF MAN

Guernsey

I. INFORMATION OF A GENERAL NATURE

145. Guernsey is an internally self-governing dependency of the Crown with a population of approximately 59,000. The United Kingdom Government is directly responsible for its international relations and defence and the Crown is ultimately responsible for its good government. The criminal law of Guernsey is generally similar to that of England and Wales.

146. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by the United Kingdom on behalf of Guernsey, and took effect in respect of Guernsey, pursuant to article 27, on 8 December 1992.

147. Section 134 of the Criminal Justice Act 1988, which came into force in the United Kingdom on 29 September 1988, made it an offence to torture a person in the circumstances there described. The Administration of Justice (Bailiwick of Guernsey) Law, 1991, which took effect on 20 March 1991, contains similar provisions, and therefore made it possible for the Convention to be ratified on Guernsey's behalf.

148. The International Covenant on Civil and Political Rights has been in force in respect of Guernsey since 29 August 1976. Article 7 of the Covenant provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

149. The European Convention on Human Rights has been in force in respect of Guernsey since 23 October 1953. By successive declarations, the United Kingdom has accepted in respect of Guernsey the right of individual petition under article 25 and the jurisdiction of the European Court of Human Rights under article 46 of that Convention.

150. It is also an offence under section 1 of the Geneva Conventions Act 1957 to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torture of a protected person or the subjection of that person to inhuman treatment. By virtue of the Geneva Conventions Act (Guernsey) Order 1966, that Act was extended to Guernsey.

151. These matters are, as appropriate, dealt with more fully where they arise in part II of this report.

II. INFORMATION RELATING TO ARTICLES 2 TO 16 OF THE CONVENTION

Article 2

152. Under the law in force in Guernsey, conduct constituting torture would involve a number of possible serious offences. Such conduct would be an

offence under the Administration of Justice (Bailiwick of Guernsey) Law, 1991. It might also amount to murder, attempted murder or a serious offence of violence.

153. A grave breach of any of the Geneva Conventions of 12 August 1949 amounting to torture is also a serious offence under Guernsey law.

154. Assaults on the person are also actionable under the civil law of Guernsey. No exceptional circumstances or any superior orders may under the law in force in Guernsey be invoked to justify torture.

155. Guernsey is also bound by article 7 of the International Covenant on Civil and Political Rights and article 3 of the European Convention on Human Rights and Fundamental Freedoms, both of which proscribe torture and other forms of ill-treatment.

Article 3

156. The extradition laws of the United Kingdom are extended to Guernsey under the Extradition Act 1989. The law is generally the same as in the United Kingdom and there are adequate powers to extradite alleged torturers. In addition, the authorities concerned would have discretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that person would be in danger of being subjected to torture. The discretion would be exercised in accordance with the requirements of this article.

Article 4

157. As indicated above, acts constituting torture as defined in the Convention are offences under the Administration of Justice (Bailiwick of Guernsey) Law, 1991, and such acts may also constitute other serious offences. It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission. The offence is punishable by imprisonment for life. Grave breaches of the Geneva Conventions carry with them a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

158. An attempt to commit a statutory or common law offence is also an offence under the common law. A person convicted of an attempt to commit an offence would be liable to a penalty no more severe than that to which he could be sentenced for the completed offence, as would a person who aids, abets, counsels or procures the commission of an offence.

159. There is no statutory offence of conspiracy in Guernsey, but common law charges of conspiracy may be brought in respect of an agreement between two or more persons to commit an offence.

Article 5

160. Under the Administration of Justice (Bailiwick of Guernsey) Law 1991, the offence of torture is committed whether the conduct takes place in Guernsey or elsewhere and irrespective of the nationality of the offender or victim.

Section 1 of the Geneva Conventions Act 1957, as extended to Guernsey, makes similar provisions as regards grave breaches of the Geneva Conventions of 12 August 1949, which include torture and inhuman treatment.

Articles 6 and 7

161. Guernsey has not enacted legislation parallel to the Police and Criminal Evidence Act (PACE) 1984. However, sections 88 and 89 of the Prison Administration (Guernsey) Ordinance 1959 provide that an untried prisoner who is detained in the States Prison having been charged by an officer of the police of or above the rank of sergeant, shall be released from custody if within 72 hours of his reception at the prison he had not been brought before any court. Secondly, the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972 (as amended by the Law of 1991 of the same title) makes specific provision to empower customs officers to search persons where there are reasonable grounds to suspect that a person arriving or leaving the Island is carrying any articles for which duty has not been paid or with respect to which their importation or exportation is prohibited (e.g. drugs). The provisions are contained in section 72 and provide the suspect with the right, if he is to be subjected to a strip or intimate search, to require that any authorization thereof is made by a jurat of the Royal Court or a superior officer and all such searches must be carried out by a person of the same sex as the suspect. Many of the PACE 1984 provisions are nevertheless observed as a matter of administrative practice. There are codes of practice in force, administered by the police, prison officers and social workers relating to the detention of persons (adult or juvenile) before charge, or before being brought before a court, or in prison or a secure unit. These codes, whilst stipulating that reasonable force may be used to secure compliance with reasonable instructions, or to prevent escape, injury, damage to property or the destruction of evidence, nevertheless lay down strict procedures to be followed when force has to be used. Strip or intimate searches are only permitted in accordance with clear criteria which have to be strictly followed and recorded, and in all cases provision is made for appropriate medical personnel to be present. There are procedures for the investigation of complaints against police and prison officers. The Judges' Rules, which applied in England prior to the enactment of PACE, still operate in Guernsey and, in particular, an accused person may not generally be questioned by the police after he has been charged.

Article 8

162. Effect is given to this article under the extradition laws of the United Kingdom as applying to Guernsey. Section 136 of the Criminal Justice Act 1988, the effect of which is preserved by section 38 (4) of the Extradition Act 1989, ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is an offence of torture contrary to section 134 of the 1988 Act.

163. Parts I to V of the Extradition Act 1989 apply to Guernsey by virtue of section 29 of that Act and make provision for the extradition from Guernsey of a person accused of an offence of torture contrary to section 134 of the Criminal Justice Act 1988, or of an attempt to commit such an offence, in the case of States parties to the Convention.

164. Section 22 (6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136 (2) of the Criminal Justice Act 1988, which provided that any act or omission, wherever committed, which constitutes torture, and a corresponding offence against the law of any State with which an extradition treaty has been concluded, shall be deemed to be an offence committed within the jurisdiction of that State.

Article 9

165. Section 5 of the Extradition Act 1873 applies directly to Guernsey and, in addition, section 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 has been extended to the Island. Consideration is being given to the question of the ratification of the European Convention on Mutual Assistance in Criminal Matters and the enactment of legislation paralleling the Criminal Justice (International Cooperation) Act 1990.

Article 10

166. The position in Guernsey is similar to that in the United Kingdom. Training programmes for law enforcement personnel and other persons involved in the custody, questioning or treatment of any individual subject to any form of arrest, detention or imprisonment emphasize the need to treat everyone as an individual and with humanity and respect, and to act within the law at all times. Such persons may also be subject to internal disciplinary codes, as well as to legal proceedings, if they use any unnecessary violence against any prisoner or other person with whom they may be brought into contact in the execution of their duty.

Article 11

167. The position in Guernsey is analogous to that in Scotland in that the powers available to the police are established primarily in common law. In Guernsey all criminal charges are brought in the name of the law officers of the Crown and there is no right for any other persons to lay criminal charges. Both the police and HM Customs use tape recordings of interviews.

Article 12

168. Subject to the directions of the law officers, as explained in paragraph 167 above, the police have a duty to investigate any alleged offence impartially, quickly and effectively. The day-to-day management of Guernsey's modern prison, Les Nicolles, is in the hands of a professionally trained governor, who is answerable at the political level to the Committee for Home Affairs. As a matter of practice, the prison governor reports any criminal offence, other than an offence under prison discipline, to the police or the law officers for investigation. There are also procedures for the investigation of complaints against prison officers.

169. Guernsey's legislation relating to mental health rests on the Mental Treatment Law (Guernsey), 1939, which is currently under review. It is likely that it will be replaced by legislation similar to the Mental Health Act 1983 in force in England and Wales.

Article 13

170. The right of an individual to complain of having been subjected to torture, and to have his case promptly and impartially examined, as required by the first sentence of this article, is secured by the law of Guernsey. Steps would be taken, under the law, to ensure protection of the complainant and witnesses.

171. Procedures exist for dealing with complaints, both by prisoners and mental patients.

Article 14

172. The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law 1990 provides for the court, on conviction of a person for an offence involving physical injury to the victim, to order compensation to be paid. In addition, victims of crimes of violence are entitled to pursue civil law for damages in tort.

Article 15

173. The Judges' Rules, to which paragraph 157 above refers, would preclude the admission in criminal proceedings of a statement extracted by torture or other oppressive means.

Article 16

174. Although the sentence of corporal punishment is still on the statute book for certain offences, it has not been passed since the judgement of the European Court of Human Rights in the case of Tyrer. The Royal Court has officially stated that the sentence of corporal punishment will not, at any time in the future, be imposed by the Island courts. No corporal punishment takes place in the Island's schools or in the Government's places of care for juveniles.

175. The Children Board of the States of Guernsey has a mandate to protect children from abuse. Powers exist under the Children and Young Persons (Guernsey) Law 1967, as amended, for children to be taken to places of safety and put into the care of the Board or other fit person by order of the Court.

Jersey

I. INFORMATION OF A GENERAL NATURE

176. The Convention was extended to Jersey in 1992.

177. The Torture (Jersey) Law, 1990, which was enacted to enable the Convention to be ratified on Jersey's behalf, makes it an offence to torture a person in the circumstances there described.

178. The ratification by the United Kingdom of the International Covenant on Civil and Political Rights included Jersey. Article 7 of the Covenant provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

179. The European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by the United Kingdom on 24 June 1988 on behalf of Jersey, and came into force on 1 February 1989.

180. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which Jersey is a party, also proscribes such conduct. By successive declarations, the United Kingdom has accepted in respect of Jersey the right of individual petition under article 25, and the jurisdiction of the European Court of Human Rights under article 46 of that Convention.

181. The Geneva Conventions Act, 1957 of the United Kingdom was extended to Jersey by the Geneva Conventions Act (Jersey) Order, 1966.

182. It is also an offence in Jersey, under the common law, to assault a person. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct falling short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

183. The law also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression.

184. These matters are, as appropriate, dealt with more fully as they arise in part II of this report.

II. INFORMATION RELATING TO ARTICLES 2 TO 16 OF THE CONVENTION

Article 2

185. The Torture (Jersey) Law, 1990 created a new criminal offence of torture, being the intentional infliction on another of severe mental or physical suffering by a public official or someone acting as such or at the instigation, or with the consent or acquiescence, of a public official. Such conduct might also amount to an assault under the common law.

186. A grave breach of any of the Geneva Conventions of 12 August 1949 amounting to torture is also a serious offence under the law of Jersey.

187. Assaults on the person are also actionable under the civil law of Jersey.

188. Jersey is bound by article 7 of the International Covenant on Civil and Political Rights and article 3 of the European Convention on Human Rights and Fundamental Freedoms, both of which proscribe torture and other forms of ill-treatment. These are among the articles from which it is not possible to derogate under article 4 of the Covenant or article 15 of the Convention.

189. No exceptional circumstances nor any superior orders may, under the law in force in Jersey, be invoked to justify torture.

Article 3

190. Under the extradition laws of the United Kingdom, as extended to Jersey, the authorities would have discretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that he would be in danger of being subjected to torture; and it is to be expected that the discretion would be exercised in accordance with the requirements of this article.

Article 4

191. As indicated above, acts constituting torture as defined in the Convention are offences under the Torture (Jersey) Law, 1990, and such acts may also constitute other serious offences. It is immaterial whether the pain and suffering is physical or mental and whether it is caused by an act or an omission. The offence is punishable by imprisonment for life. Grave breaches of the Geneva Conventions carry with them a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

192. An attempt to commit a statutory or common law offence is itself an offence under the common law. A person convicted of an attempt to commit an offence would be liable to a penalty no more severe than that to which he could be sentenced for the completed offence, as would a person who aids, abets, counsels or procures the commission of an offence.

193. There is no statutory offence of conspiracy in Jersey, but common law charges of conspiracy may be brought in respect of an agreement between two or more persons to commit an offence.

Article 5

194. Under article 1 of the Torture (Jersey) Law, 1990, the offence of torture is committed whether the conduct takes place in Jersey or elsewhere and irrespective of the nationality of the offender or the victim. Section 1 of the Geneva Conventions Act, 1957, as extended to Jersey, makes similar provision as regards grave breaches of the Geneva Conventions of 12 August 1949, which include torture and inhuman treatment.

Article 6

195. Where a person who is present in Jersey is alleged to have committed torture, to have attempted to commit torture or to be guilty of complicity or participation in torture, the police, as the responsible authority in Jersey for the prevention and detection of crime, would, on the matter coming to their attention, carry out an investigation into the facts.

196. Where a person present in Jersey is suspected of having committed one of the relevant offences, steps available under the ordinary criminal law of Jersey would be taken to bring him into custody or otherwise ensure his

presence for such time as is necessary to enable criminal or extradition proceedings to be brought. In practice, given the seriousness of the offences, he is likely to be taken into custody.

197. There has been no known instance of a case falling within paragraphs 3 or 4 of article 6 in Jersey, and no standing arrangement in relation to either paragraph has been thought to be necessary. If any such case were to occur, regard would be had to the requirements of the paragraph concerned.

Article 7

198. The long-standing practice of the relevant authorities in Jersey as regards the investigation of alleged criminal offences and the consideration of prosecution for such offences meets the requirements of this article. Proceedings for an offence under the Torture (Jersey) Law, 1990, cannot be begun except by, or with the consent of, the Attorney General.

Article 8

199. The requirements of this article are met by the Extradition Act, 1989 of the United Kingdom, section 28 (1) of which provides that parts I to V of that Act shall extend to Jersey and shall have effect as if Jersey were part of the United Kingdom.

Article 9

200. Assistance of the kind required by this article could be provided under the United Kingdom's extradition legislation which extends to Jersey, and the Evidence (Proceedings in Other Jurisdictions) (Jersey) Order, 1983, made in exercise of the power conferred by section 10 (3) of the Evidence (Proceedings in Other Jurisdictions) Act, 1975 of the United Kingdom to extend the provisions of that Act to Jersey.

Article 10

201. All training programmes for law enforcement personnel and other persons involved in the custody, questioning or treatment of any individual subject to any form of arrest, detention or imprisonment emphasize the need to treat everyone as an individual and with humanity and respect, and to act within the law at all times.

202. The Police Force (General Provisions) (Jersey) Order, 1974 sets out a Code of Discipline for police officers and prescribes sanctions for the breach thereof. The Code would certainly cover acts which are proscribed by the Convention.

203. The Prison (Jersey) Rules, 1957, as amended, apply equally strict rules to prison officers in their treatment of, and conduct towards, prisoners.

Article 11

204. The interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of

arrest, detention or imprisonment, are reviewed as necessary in Jersey, where there has been no known instance of torture or any associated practice.

205. The Judges' Rules formerly in force in England and Wales continue to be applied in Jersey. These set out rules for the questioning of suspects by the police and for the cautioning of such suspects. It is likely that case-law decisions arising from the application of the Codes of Practice under the Police and Criminal Evidence Act, 1984 of the United Kingdom, which superseded the Judges' Rules in England and Wales, would be regarded by the Jersey courts as having persuasive authority in circumstances similar to those envisaged by the Judges' Rules or, where appropriate, in circumstances as to which those Rules are silent.

Article 12

206. The police are under a general duty to carry out, quickly and effectively, an impartial investigation of any alleged offence.

207. Under the Prison (Board of Visitors) (Jersey) Regulations, 1957, there is constituted a Board of Visitors whose duties are to pay frequent visits to the prison, investigate abuses, and report as necessary to the States of Jersey or the Prison Board.

Article 13

208. The right of an individual to complain of having been subjected to torture, and to have his case promptly and impartially examined, as required by the first sentence of this article, would be secured by the general law of Jersey. Steps would also be taken under the general law to ensure the protection of the complainant and witnesses.

209. Rule 40 of the Prison (Jersey) Rules, 1957, as amended, requires that every request by a prisoner to see the governor or a member of the Prison Board or a member of the Board of Visitors shall be recorded by the officer to whom it is made, and conveyed without delay to the governor. The governor must hear the applications of all prisoners who have made a request to see him, and must inform the next member of the Prison Board or member of the Board of Visitors who visits the prison of every request by a prisoner to see such members.

Article 14

210. Acts which would constitute torture, within the meaning of article 1 of the Convention, would constitute civil wrongs for which remedies would be available in civil proceedings. In such proceedings compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Were a victim of torture to die as a result of his treatment, his dependants would be able to claim in respect of his death by virtue of the Fatal Accidents (Jersey) Law, 1962. Legal aid would be available to any claimant.

Article 15

211. By virtue of the Judges' Rules and the common law, no statement established as having been made as a result of torture or other form of coercion would be admissible as evidence in any proceedings, except against a person of torture as evidence that the statement was made.

Article 16

212. As indicated in part I above, acts of ill-treatment of the kind described in this article are proscribed, for example, by article 7 of the International Covenant on Civil and Political Rights and article 3 of the European Convention on Human Rights, both of which have been accepted by Jersey.

213. Some instances of ill-treatment covered by this article would amount to a criminal offence under the common law. Additionally, or alternatively, the ill-treatment concerned could found the basis of an action at civil law.

214. Any instance of cruel, inhuman or degrading treatment or punishment committed by, at the instigation of, or with the consent or acquiescence of any public official or anyone acting in an official capacity would be wholly condemned and attended by appropriate criminal and disciplinary sanctions.

Isle of Man

I. INFORMATION OF A GENERAL NATURE

215. The Isle of Man is an island with a population of approximately 70,000. It is a Crown Dependency and a peaceful, law-abiding island with a long tradition of democracy. In fact and law the Isle of Man has almost complete autonomy.

216. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on behalf of the Isle of Man, among other territories, and the Convention took effect for the Isle of Man, pursuant to article 27, on 8 December 1992.

217. The European Convention on Human Rights has been in force for the Isle of Man since September 1967. The United Kingdom currently accepts, in respect of the Isle of Man, the right of individual petition under article 25 of the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights under article 46 of that Convention.

218. Conventions do not have direct legal effect as part of the law of the Isle of Man and there is no written constitution guaranteeing rights. However it is a principle of the Manx law that rights are inherent unless denied by law.

219. Section 134 of the Criminal Justice Act 1988 (an Act of Parliament), which came into force on 29 September 1988, made it an offence to torture a person in the circumstances there described. Sections 34 and 135 of that Act,

modified as in the Criminal Justice Act 1988 (Torture) (Isle of Man) Order 1989 were extended to the Isle of Man by that Order, which came into force on 13 July 1989 for the express purpose of ensuring compliance with the Convention.

220. It is also an offence under section 1 of the Geneva Conventions Act 1957 (an Act of Parliament) to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torture of a protected person or the subjection of him to inhuman treatment. By virtue of the Geneva Conventions Act (Isle of Man) Order 1970, that Act extends, with specified exceptions, to the Isle of Man.

221. It is the policy of the Isle of Man government, as approved by the parliament (Tynwald), to provide a safe and secure environment in which people can reside and go about their business and which can be enjoyed by visitors to the island and to ensure that adequate custodial facilities are available for persons who have been deprived of their liberty by the courts and to provide advice and supervision for offenders. It is a further approved policy that the Department of Home Affairs should keep in custody those committed by the courts and look after them with humanity and offer help to them to lead law-abiding lives after release.

222. It has long been an offence under Manx law to assault a person. There are varying degrees of assault - common assault, assault occasioning actual bodily harm and assault occasioning grievous bodily harm. The only justification in law for assault is that the person carrying out the assault was acting in self-defence. Recourse to torture would, in most circumstances, involve the committing of assault or other, more serious, offences - for example, murder or attempted murder. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct which may fall short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

223. The law also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression.

224. These matters are, as appropriate, dealt with more fully where they arise in part II of this report.

II. INFORMATION RELATING TO ARTICLES 2 TO 16 OF THE CONVENTION

Article 2

225. Under the law in force in the Isle of Man, conduct constituting torture as defined in article 1 of the Convention would involve a number of possible serious offences. It would be an offence under section 134 of the Criminal Justice Act 1988 (an Act of Parliament) as modified and extended to the Isle of Man. It might also involve the committing of murder or some lesser offence under domestic legislation - for example, unlawfully and maliciously wounding or inflicting any grievous bodily harm contrary to section 35 of the Criminal Code 1872 (an Act of Tynwald) or maliciously administering any poison or other destructive or noxious thing, contrary to section 38 of the Criminal Code 1872 (an Act of Tynwald).

226. As indicated in paragraph 220, a grave breach of any of the Geneva Conventions amounting to torture is also a serious offence under the law of the Isle of Man.

227. Assaults on the person are also actionable under the civil law of the Isle of Man.

228. Article 3 of the European Convention on Human Rights, which proscribes torture and other forms of ill-treatment, is among the articles from which it is not permissible to derogate under article 15 of that Convention.

229. No exceptional circumstances nor any superior orders may under the law in force in the Isle of Man be invoked to justify torture.

Article 3

230. The extradition laws of the United Kingdom are extended to the Isle of Man. The law is generally the same as in the United Kingdom and there are adequate powers to extradite alleged torturers. In addition, the authorities concerned would have discretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that he would be in danger of being subjected to torture. The discretion would be exercised in accordance with the requirements of this article.

Article 4

231. As indicated above, acts constituting torture are offences under section 134 of the Criminal Justice Act 1988 (an Act of Parliament) as modified and extended to the Isle of Man, and torture may constitute other serious offences as well. Torture contrary to section 134 carries a maximum of life imprisonment. Grave breaches of the Geneva Conventions carry with them a maximum of 14 years' imprisonment, unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

232. Where it is not specifically made an offence by legislation (as, for example, is attempt to murder by section 27 of the Criminal Code 1872 (an Act of Tynwald)), an attempt to commit any of the relevant offences would itself amount to an offence under section 9 of the Criminal Law Act 1981 (an Act of Tynwald). A person convicted of an attempt to commit an offence would be liable to a penalty no more severe than that to which he could be sentenced for the completed offence. Similarly, any person who becomes an accessory before the fact to any felony or who counsels, procures or causes any other person to commit any felony may be tried, prosecuted and punished in the same manner as a principal offender.

Article 5

233. The provisions of section 134 of the Criminal Justice Act 1988 (an Act of Parliament) as modified and extended to the Isle of Man apply by their terms to acts of the proscribed kinds whether "in the Territory or elsewhere" and to a person falling within either subsection (1) or subsection (2) "whatever his nationality".

Article 6

234. Where a person who is present in the Isle of Man is alleged to have committed torture, to have attempted to commit torture or to be guilty of complicity or participation in torture, the police, as the responsible authority in the Isle of Man for the prevention and detection of crime, would, on the matter coming to their attention, carry out an investigation into the facts.

235. Where such a person is suspected of having committed one of the relevant offences, steps available under the ordinary criminal law of the Isle of Man would be taken to bring him into custody or otherwise ensure his presence for such time as is necessary to enable criminal or extradition proceedings to be brought. In practice, given the seriousness of the offences, he is likely to be taken into custody.

236. No case falling within paragraphs 3 or 4 of article 6 has occurred in the Isle of Man since the entry into force of the Convention for the island and no standing arrangement in relation to either paragraph has been thought to be necessary. If any such case were to occur, regard would be had to the requirements of the paragraph concerned.

Article 7

237. The practice and law in the Isle of Man as regards the investigation of alleged criminal offences and the consideration of prosecution for such offences conform to the requirements of this article. The legal system of the island ensures that a person charged with a criminal offence shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Article 8

238. Effect would be given to this article under the extradition laws of the United Kingdom as applying in the Isle of Man. Section 136 of the Criminal Justice Act 1988 (an Act of Parliament), the effect of which is preserved by section 38 (4) of the Extradition Act 1989 (an Act of Parliament), ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act.

239. Parts 1 to 5 of the Extradition Act 1989 (an Act of Parliament) apply to the Isle of Man by virtue of section 29 of that Act and make provision for the extradition from the Isle of Man of persons accused of torture contrary to section 134 of the Criminal Justice Act 1988 (an Act of Parliament), and an attempt to commit such an offence in the case of States parties to the Convention.

240. Section 22 (6) of the Extradition Act 1989 (an Act of Parliament) and paragraph 15 of Schedule 1 to that Act re-enact section 136 (2) of the Criminal Justice Act 1988 (an Act of Parliament), which provided that any act or omission, wherever committed, which constitutes torture, and a

corresponding offence against the law of any State with which an extradition treaty has been concluded, shall be deemed to be an offence committed within the jurisdiction of that State.

Article 9

241. Assistance of the kind required by this article could, in extradition cases, be provided in accordance with applicable extraditional laws. In addition, legislation of the same effect as the United Kingdom Criminal Justice (International Co-operation) Act 1990 has been in force since 1991.

Article 10

242. The prohibition against torture is well understood by police, prison officers, medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of an individual subjected to any form of arrest, detention or imprisonment. Such persons are aware of the need to treat everyone with humanity and respect and to act within the law at all times. Such persons may also be subject to internal disciplinary codes, as well as to legal proceedings, if they use any unnecessary violence against any prisoner or other person with whom they may be brought into contact in the execution of their duty.

Article 11

243. The interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, are reviewed as necessary in the circumstances of the Isle of Man. The Prison Rules in the Isle of Man require that remand prisoners be held separately from convicted prisoners. There has been no known instance of torture or any associated practice.

244. The directions to the police known as the Judges' Rules as they applied in the United Kingdom prior to the enactment of the Police and Criminal Evidence Act 1984 (an Act of Parliament) are applied in the Isle of Man. These rules contain administrative directives to the police as to the questioning of suspects and persons in police custody. Failure to comply with the Judges' Rules can result in any evidence obtained thereby being rendered inadmissible in any subsequent criminal proceedings. In addition the police in the Isle of Man adopt procedures which are based on the Codes of Practice made under that Act dealing with the detention, treatment and questioning of persons. English cases on the 1984 Act and the Codes under that Act are likely to be regarded as highly persuasive by the Manx courts.

245. The Isle of Man has an independent Commissioner, currently a former High Court Judge, to supervise the investigation of complaints against the police. This is a statutory appointment with appropriate legal powers.

Article 12

246. The police are under a general duty to carry out, quickly and effectively, an impartial investigation of any alleged offence.

Article 13

247. The right of an individual who claims that he has been subjected to torture to complain, and to have his case promptly and impartially examined, as required by the first sentence of this article, is secured by the law of the Isle of Man. Steps would also be taken, under the law, to ensure protection of the complainant and witnesses.

248. The Isle of Man has a legal aid scheme, established by statute, which is entirely funded out of public funds. It provides legal aid in criminal and civil cases on a similar basis to the schemes operating in the United Kingdom.

249. There are also special provisions for the handling of complaints in particular cases. The Prison Rules 1984, made under the Prison Act 1965 (an Act of Tynwald), provide for the constitution of a visiting committee which is required to satisfy itself as to the state of the prison premises and the treatment of the prisoners. In particular, the committee, or any member, is empowered to hear any complaint which a prisoner wishes to make. The committee is required to direct the attention of the prison governor to any matter which calls for his attention and inform the Department of Home Affairs immediately of any abuse which comes to its knowledge.

Article 14

250. Acts which constitute torture within the meaning of article 1 of the Convention constitute civil wrongs for which civil remedies are available in civil proceedings. In such proceedings, compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Such proceedings stem from the civil law. Were a victim to die as a result of his treatment, his estate and/or his dependents would be able to undertake civil proceedings and seek damages in respect of his death under the Law Reform (Miscellaneous Provisions) Act 1938 and the Fatal Accidents Act 1981 (both being Acts of Tynwald).

251. The government agencies in the Isle of Man can be sued and statute provides special arrangements for proceedings in respect of the acts of officials who are Crown servants.

252. There are provisions in Acts of Tynwald which enable criminal courts to award compensation to victims. The Isle of Man has a criminal injuries scheme which is based on the scheme operating in the United Kingdom.

Article 15

253. The common law rule of evidence applies so that admissions obtained as a result of torture or other oppressive means would not be admissible.

Article 16

254. As explained in part I above, other international obligations which apply to the Isle of Man - notably, those of article 3 of the European Convention on Human Rights - already required the prevention of acts of the kind described

in this article. The Government of the Isle of Man, which would view with grave concern any instance of unlawful ill-treatment committed by or at the instigation of or with the consent of a public officer or other person in an official capacity, does not consider that any change in existing law or practice is necessary for the fulfilment of those obligations.

255. Some instances of ill-treatment covered by this article would amount to a criminal offence under the law of the Isle of Man. The ill-treatment concerned could also provide a basis for civil proceedings.

Part Three

DEPENDENT TERRITORIES

Introduction

256. This report constitutes the second periodic report of the United Kingdom under article 19 of the Convention in respect of its dependent territories overseas to which the Convention applies and which have already been the subject of an initial report, that is to say, Anguilla, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena and the Turks and Caicos Islands. (The initial report in respect of these territories was contained in CAT/C/9/Add.10 which was supplemented first at the oral examination on 18 November 1992 (see CAT/C/SR.132,133 and 133/Add.2) and subsequently by CAT/C/9/Add.14.) It also contains the United Kingdom's initial report in respect of Bermuda and Hong Kong, to which the Convention was extended on 8 December 1992.

Anguilla

257. No new measures have been introduced, nor have any new developments taken place, since the presentation of the initial report in respect of Anguilla that might have a bearing on the implementation of the Convention in Anguilla. Accordingly, the position remains as stated in that report, as amplified at the oral examination and as subsequently supplemented in writing in CAT/C/9/Add.14. The Government of Anguilla continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

Bermuda

I. INFORMATION OF A GENERAL NATURE

258. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was ratified by the United Kingdom on 8 December 1988 was extended to Bermuda on 8 December 1992. The extension took effect on 8 January 1993.

259. The Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988 (SI No. 1988/2242), as amended by the Criminal Justice Act 1988 (Torture) (Overseas Territories) (Amendment) Order 1992, extended sections 134 and 135 of the Criminal Justice Act 1988 of the United Kingdom to Bermuda pursuant to section 138 of the Act. Sections 134 and 135 of the Act give effect to the provisions of the Convention by creating an offence of torture and by providing an appropriately severe punishment for it. Section 135 provides that the proceedings for such an offence shall be brought only by, or with the consent of, the Attorney-General. (The 1992 Order merely added Bermuda to the list of territories to which the 1988 Order extended.)

260. The International Covenant on Civil and Political Rights was ratified by the United Kingdom in respect of Bermuda, inter alia, on 20 May 1976. Article 7 of the Covenant prohibits torture or cruel, inhuman or degrading treatment or punishment.

261. The European Convention on Human Rights was extended to Bermuda on 23 November 1953. Article 3 of the Convention also prohibits torture or inhuman or degrading treatment or punishment. By successive declarations under articles 25 and 46 - the current declaration was made in 1991 - the United Kingdom has accepted the right of individual petition and the compulsory jurisdiction of the European Court of Human Rights in respect of alleged violations of the Convention in Bermuda.

262. The Constitution of Bermuda is contained in Schedule 2 to the Bermuda Constitution Order 1968 which was made by Her Majesty in Council under the Bermuda Constitution Act 1967 of the United Kingdom. The Bermuda Constitution Order 1968 came into force on 21 February 1968. Chapter 1 of the Constitution contains provisions for the protection of the fundamental rights and freedoms of the individual. Section 3 (1) of the Constitution states that "No person shall be subjected to torture or to inhuman or degrading treatment or punishment".

263. In addition to constituting an offence under the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, the use of torture would, depending on the circumstances, constitute the offence of assault under the Criminal Code of Bermuda or another, more serious, offence. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law of Bermuda includes conduct which may fall short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

264. Common law rules also ensure that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression. Such oppression may include torture or cruel, inhuman or degrading treatment.

265. Under section 1 of the Geneva Conventions Act 1957 of the United Kingdom, it is an offence to commit a grave breach of any of the four Geneva Conventions whose texts are set out in the Schedules to the Act. Under article 50 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (the First Schedule to the Act), one such grave breach is torture or inhuman treatment. The Act was extended to Bermuda by the Geneva Conventions Act (Colonial Territories) Order in Council 1959 (SI 1959/1301).

266. Although the provisions of the Convention cannot themselves be invoked before, and directly enforced by, the courts in Bermuda, their substance can be so invoked and enforced by virtue of the provisions of the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988 as amended by the Criminal Justice Act 1988 (Torture) (Overseas Territories) (Amendment) Order 1992. As section 134 of the 1988 Act (as extended by those Orders) makes the offence of torture an indictable offence, the Supreme Court of Bermuda has jurisdiction in relation to it.

267. The Criminal Injuries (Compensation) Act 1973 makes it possible for an individual who claims to have been a victim of torture or other cruel, inhuman or degrading treatment or punishment to be compensated for his injuries. Under section 3 of the Act, where a person is injured and the injury is directly attributable to the commission by any other person of a crime of

violence, the Criminal Injuries Compensation Board may on application make an order for the payment of compensation, in such amount as it may determine, to or for the benefit of the victim. Under section 5 of the Act, the Board may refuse to entertain a claim for compensation where no person has been prosecuted for the offence giving rise to the injury unless the offence has been reported to the police as soon as reasonably practicable after its commission by the victim or some other person on behalf of the victim. Physical and psychological treatment which is available to victims of other types of violent crime is available as a source of rehabilitation to victims of torture.

268. In addition, section 15 of the Bermuda Constitution makes provision for the enforcement of fundamental rights set out in chapter 1, which include a person's right not to be subjected to torture or to inhuman or degrading treatment or punishment. Under section 15 (1), if a person alleges that he has been, is being or is likely to be subjected to torture or to inhuman or degrading treatment or punishment, then, "without prejudice to any other action in respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress". The powers vested in the Supreme Court when such an application is made are set out in section 15 (2), which reads as follows:

> "(2) The Supreme Court shall have original jurisdiction -
>
> (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
>
> (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,
>
> and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled:
>
> Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law".

269. The above matters are, as appropriate, dealt with more fully when they arise in part II of this report.

II. INFORMATION RELATING TO ARTICLES 2 TO 16 OF THE CONVENTION

Article 2

270. Under the laws of Bermuda there are several serious offences which could constitute torture as defined by article 1 of the Convention. Under section 134 of the Criminal Justice Act 1988 of the United Kingdom, as extended to Bermuda, torture, as so defined, is an offence in itself. In addition, torture may constitute an offence under the Criminal Code Act 1907 (the Criminal Code), such as wounding with intent to do grievous bodily harm,

contrary to section 305; doing grievous bodily harm, contrary to section 306; assault occasioning bodily harm, contrary to section 309; common assault, contrary to section 314; murder, contrary to section 287; or manslaughter, contrary to section 293.

271. Under the Geneva Conventions Act 1957 of the United Kingdom, as extended to Bermuda by the Geneva Conventions Act (Colonial Territories) Order in Council 1959, a grave breach of one of the Geneva Conventions set out in the Schedules to the Act which amounts to torture is an offence.

272. Assaults on the person, which torture could of course amount to, are also actionable under the civil law of Bermuda.

273. Under the laws of Bermuda, no exceptional circumstances nor any order from a superior officer or a public authority may be invoked as a justification of torture.

Article 3

274. Though there are no laws specifically prohibiting the expulsion, refoulement or extradition of a person to a country where he risks torture, the relevant laws in force in Bermuda (the Extradition Act 1989 of the United Kingdom and the Immigration and Protection Act 1956) give the competent authority, the Governor, an ultimate discretion in every case to refuse to order the extradition or expulsion of a person who, in law, is liable to have such an order made against him. It is inconceivable that this discretion would ever be exercised otherwise than in conformity with article 3 of the Convention, i.e. that a person would ever be ordered to be extradited or expelled to another country where there were substantial grounds for believing that he would be in danger of being tortured.

Article 4

275. As indicated above, under section 134 of the Criminal Justice Act 1988 of the United Kingdom, as extended to Bermuda, acts which constitute torture are offences. Torture, contrary to section 134 of the Criminal Justice Act 1988, carries a maximum sentence of life imprisonment. Also as indicated above, torture may constitute other serious offences such as murder, manslaughter or causing grievous bodily harm contrary to the provisions of the Criminal Code. The offence of murder also carries a maximum sentence of life imprisonment under section 288 of the Criminal Code. In addition, a grave breach of any of the four Geneva Conventions of 12 August 1949 carries a maximum penalty of 14 years' imprisonment. If the conduct involves killing, the maximum penalty is life imprisonment.

276. Under the Criminal Code an attempt to commit certain offences is itself an offence. In some cases specific penalties are provided for the commission of that offence. For example, attempted murder is an offence under section 289 of the Criminal Code and carries a maximum sentence of 20 years' imprisonment. The Criminal Code also makes general provision for the punishment of those offences for which no punishment is specifically provided. For example, under section 77 of the Criminal Code "any person who attempts to commit a felony is liable, if no other punishment is provided, to imprisonment

for two years". Under section 78 of the Criminal Code "any person who attempts to commit an indictable offence other than treason or felony is liable, if no other punishment is provided, to a punishment equal to one half of the greatest punishment to which an offender convicted of the offence which he attempted to commit is liable". Under section 79 of the Criminal Code "any person who attempts to commit any offence other than an indictable offence is guilty of an offence and is liable, if no other punishment is provided, to one half of the greatest punishment to which an offender convicted of the offence which he attempted to commit is liable". Under section 27 of the Criminal Code any person who aids or abets or counsels or procures the commission of a criminal offence is liable to the same punishment as if he had himself committed that offence.

Article 5

277. The provisions of section 134 of the Criminal Justice Act 1988 of the United Kingdom, as extended to Bermuda, apply expressly to all acts of torture irrespective of where they were committed and irrespective of the nationality of the perpetrators or the nationality of their victims. The courts of Bermuda have full jurisdiction accordingly in conformity with article 5 of the Convention.

Article 6

278. Where a person who is alleged to have committed or attempted to commit torture or to be guilty of participation in torture is present in Bermuda, the police, as the authority in Bermuda which is responsible for the investigation and prevention of crime, would, on the matter being brought to their attention, carry out a full investigation into the facts.

279. Under section 5 (1) (e) of the Bermuda Constitution no person may be deprived of his personal liberty except upon reasonable suspicion that he has committed, is committing, or is about to commit a criminal offence. The Constitution authorizes, in section 5 (1) (h), deprivation of personal liberty "for the purpose of effecting the expulsion, extradition or other lawful removal from Bermuda of that person". Under section 5 (3) of the Constitution any person who is arrested or detained in such a case as is mentioned in section 5 (1) (e) and who is not released must be brought without undue delay before a court; "and if any person arrested or detained in such a case as is mentioned in the said paragraph (e) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial".

280. Other provisions of section 5 of the Constitution which are relevant to this article are as follows:

> Section 5 (4) - "Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person";

> Section 5 (5) - "Any person who is arrested shall be entitled to be informed, as soon as he is brought to a police station or other place of custody, of his rights as defined by a law enacted by the Legislature to remain silent, to seek legal advice, and to have one person informed by telephone of his arrest and of his whereabouts".

281. Since the Convention was extended to Bermuda, no case has so far occurred in Bermuda which would come under the provisions of paragraph 3 or paragraph 4 of article 6. If such a case occurs, the requirements of the relevant paragraph will be implemented.

Article 7

282. The practices of the authorities in Bermuda who are responsible for the investigation of criminal offences and for considering whether to prosecute, namely, the police and the Attorney-General, conform to the requirements of this article. In this context attention is also drawn to the provisions of section 5 of the Bermuda Constitution which are cited in paragraphs 279 and 280 above.

283. Section 6 of the Constitution provides as follows:

> "6. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.
>
> (2) Every person who is charged with a criminal offence:
>
> (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
>
> (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
>
> (c) shall be given adequate time and facilities for the preparation of his defence;
>
> (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or, where so provided by any law, by a legal representative at the public expense;
>
> (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and

(g) shall, when charged on information or indictment in the Supreme Court, have the right to trial by jury;

and, except with his own consent, the trial shall not take place in his absence, unless he so conducts himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court".

284. Paragraphs 282 and 283 above describe how the guarantees provided for in paragraphs 2 and 3 of article 7 of the Convention are ensured. No judgements have to date been rendered under this article.

Article 8

285. Extradition to and from Bermuda, as in the case of other United Kingdom dependent territories, is now governed by the Extradition Act 1989 of the United Kingdom, which consolidates the law formerly embodied in the Extradition Act 1870, as from time to time amended (including as amended by those provisions of the Criminal Justice Act which were enacted to give effect to the Convention), and the Fugitive Offenders Act 1967, as likewise amended. Section 38 (4) of the Extradition Act 1989 preserves the effect of section 136 (1) of the Criminal Justice Act 1988 which provided that torture should be an extradition crime in the law of the United Kingdom (and therefore of Bermuda). This goes most of the way towards implementing paragraph 1 of article 8 of the Convention so far as it concerns existing extradition arrangements between the United Kingdom and other States parties to the Convention. However, in relation to Bermuda, that process will not be complete and there will also be no provision giving effect to paragraph 2 of article 8 (concerning States parties with whom the United Kingdom does not have existing extradition arrangements) until an Order in Council is made adding Bermuda to the list of those dependent territories to which the Extradition (Torture) Order 1991 extends. Such an Order is in the course of preparation and it is hoped that it will be made shortly. Section 22 (6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136 (2) of the Criminal Justice Act 1988 which provided that any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State with which an extradition treaty has been completed shall be deemed to be an offence committed within the jurisdiction of that State. This implements paragraph 4 of article 8.

Article 9

286. The Government of Bermuda is currently considering the provisions of a model treaty which would facilitate international mutual legal assistance in criminal matters. However, the existing extradition laws could provide the kind of assistance required by this article.

287. In addition, sections 27P to 27T of the Evidence Act 1905 (which are substantially to the same effect as the relevant provisions of the Evidence (Proceedings in Other Jurisdictions) Act 1975 of the United Kingdom) make provision for the taking of evidence required for both civil and criminal proceedings in other jurisdictions. [The texts of these provisions are available for consultation in the files of the Centre for Human Rights.]

Article 10

288. The law enforcement personnel in Bermuda, namely, the police, are prohibited by their disciplinary code from inflicting torture on any person. For example, order 8 of the Police (Discipline) Orders 1975 makes any unlawful or unnecessary exercise of authority, that is to say, the use by a police officer of any unnecessary violence on any prisoner or person with whom he may be brought into contact in the execution of his duty, an offence against discipline for which there are prescribed punishments. The Police (Discipline) Orders 1975 are made under section 32 of the Police Act 1974.

289. Under rule 12 (q) of the Prison Officers (Discipline, etc.) Rules 1981 a prison officer is guilty of an offence against discipline "if he, in dealing with a prisoner, uses force unnecessarily or, where the application of force to a prisoner is necessary, uses undue force." These rules are made under section 32 of the Prisons Act 1979. Disciplinary awards or punishments are set out in rule 18 of the rules.

290. Under section 65 of the Mental Health Act 1968 it is an offence "for any person being an officer on the staff or otherwise employed at the Mental Hospital or other mental nursing home to ill-treat or wilfully neglect a patient for the time being receiving psychiatric care as an in-patient in that hospital or home; or to ill-treat or unlawfully neglect, on the premises of which the Mental Hospital or mental nursing home forms part, a patient for the time being receiving such care there as an out-patient". Any person who commits an offence under section 65, if convicted on indictment, may be imprisoned for two years or, upon summary conviction, may be imprisoned for six months or fined $720 or both. No proceedings can be instituted for an offence under section 65 except by or with the consent of the Attorney-General.

291. The preceding information indicates that the prohibition against torture is directly or by implication embodied in the legislation which governs the conduct of law enforcement and medical personnel who may be responsible for or involved in the custody, interrogation or treatment of any person who has been arrested, detained or imprisoned in Bermuda. The training of such personnel would include familiarization with the legislative prohibitions discussed above and measures to ensure their implementation.

Article 11

292. Under section 33 of the Police Act 1974 the Commissioner of Police "may issue administrative instructions, to be called Force Standing Instructions, not inconsistent with this Act or any order made thereunder, for the general control, direction and information of the Force and Reserve Constabulary". Such instructions may relate to police duties and "such other matters as may be necessary or expedient for preventing abuse or neglect of duty and for rendering the Force and Reserve Constabulary more efficient in the discharge of their duties": section 33 (1) of the Police Act 1974. The Force Standing Instructions set out the rules and methods to be adopted by the Bermuda police in relation to the custody, treatment and interrogation of detained persons and are reviewed periodically as necessary. The Force Standing Instructions, in addition, require the Bermuda Police to adhere to the Judges Rules pertaining to the questioning of suspects and persons charged with offences.

293. Under section 7 of the Prisons Act 1979 the Minister responsible for the Prisons Department has the power to make rules for the regulation and management of prisons and for the treatment of persons required to be detained therein. In exercise of that power the Minister has made the Prison Rules 1980. In addition, section 9 of the Prisons Act 1979 provides that the functions of the Treatment of Offenders Board are to be prescribed by the prison rules made under section 7 which shall "among other things require the members to pay visits to each prison and hear any applications which may be made by prisoners detained therein and to report to the Minister any matter which they consider it expedient to report". It further provides that "any member may by arrangement with the senior officer enter any prison and shall have free access to every part thereof and to every prisoner detained therein". Under rule 163 (2) of the Prison Rules 1980 "the Board shall hear any complaint or application which a prisoner may wish to make to the Board and it may, if necessary, discuss with the Commissioner or his Deputy the circumstances of that complaint or application together with any opinion held or recommendations to be made by the Board".

Article 12

294. Under instruction 3 of chapter 1 of the Force Standing Instructions of the Bermuda Police Force, made under section 33 of the Police Act 1974, "when a crime or suspected crime is brought to the notice of Police it is essential that the Force machinery is set in motion immediately". The responsibilities and procedures which would be applicable to an investigation under this article are set out in detail in the Force Standing Instructions. To date there have been no reported investigations under his article.

Article 13

295. As indicated in paragraph 37 above, it is the practice of the Bermuda Police Force, as dictated by the Force Standing Instructions, to take immediate action once notification has been received regarding the suspected or actual commission of an offence. The administrative procedures used by the Bermuda police in the investigation of any serious criminal offence would be used in the investigation of an alleged offence of torture. Such procedures are set out in the Force Standing Instructions.

296. The laws of Bermuda make provision for the protection of a complainant and witnesses against ill-treatment or intimidation as a consequence of his complaint or of any evidence given. Section 36 of the Magistrates Act 1948 states that, without prejudice to any other Act, any person who uses indecent, violent, insulting or threatening words or gestures in a court or to any party or witness within the precincts of a court or unlawfully assaults any person in court commits an offence under the Act and is liable to be dealt with in accordance with section 37. Section 37 of the Magistrates Act 1948 reads as follows:

> "(1) Except as provided in subsection (3), any person guilty of an offence against the Act may be arrested by a police officer on the verbal order of the magistrate if the offender is in court, or with a warrant signed by the magistrate if the offender is not present in court, and thereupon it shall be lawful for the magistrate:
>
> (a) to admonish or discharge the offender; or
>
> (b) to order the offender to be removed from the court; or
>
> (c) to order the offender to pay a fine not exceeding $2,000.
>
> (2) Where the offender has failed or neglected to pay any fine imposed upon him under this section within such time as the magistrate may have prescribed, it shall be lawful for the magistrate to commit the offender to prison by warrant under his hand for a term not exceeding 14 days."

297. In addition, section 125A of the Criminal Code Act 1907 makes it an offence to intimidate a witness. It reads as follows:

> "Any person who:
>
> (a) threatens, intimidates, or restrains;
>
> (b) uses violence to or inflicts injury on;
>
> (c) causes or procures violence, damage, loss or disadvantage to; or
>
> (d) causes or procures the punishment of, or loss of employment of,
>
> a person for or on account of his having appeared, or being about to appear, as a witness in a judicial proceeding is guilty of a summary offence and shall be liable on conviction to imprisonment for 12 months."

Attention is also drawn to the provisions of the Prison Rules 1980 cited above.

Article 14

41. Under section 3 of the Criminal Injuries (Compensation) Act 1973, where a person is killed or injured, and the death or injury is directly attributable to the committing by any other person of a crime of violence (which term would of course include torture), the Criminal Injuries Compensation Board may on application make an order for the payment of compensation in such amount as it may determine. Such payment may be made to the following persons under section 3(1):

> "(i) to or for the benefit of the victim; or
>
> (ii) where the compensation is in respect of pecuniary loss suffered or expenses incurred, as a result of the victim's injury, by any person responsible for the maintenance of the victim, to that person; or
>
> (iii) where the victim has died as a result of the crime of violence:
>
> (a) or for the benefit of the victim's dependants or any one or more of them; or
>
> (b) if there are no such dependants and the compensation is in respect of expenses incurred as a result of the victim's death, to the person who incurred those expenses."

299. The benefits of the Act are not confined to nationals or to any other restricted group of persons. Section 1 defines "victim", for the purposes of the Act, simply as "a person who has sustained an injury in the circumstances set out in section 3".

300. There are no programmes of rehabilitation in Bermuda which exist exclusively for victims of torture. However, such victims would have access to physicians, psychiatrists and other specialists for any necessary physical or psychiatric rehabilitation.

301. In addition to or instead of seeking compensation under the Criminal Injuries (Compensation) Act 1973, a victim of torture would also have the right to seek damages from the perpetrators by way of civil proceedings, e.g. for assault or trespass to the person. In such proceedings, compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. (But any damages so obtained would have to set off against any compensation awarded under the Act.)

Article 15

302. Under the common law rules of evidence, confessions or statements made as a result of torture or other oppressive means are inadmissible as evidence in judicial proceedings.

Article 16

303. As in the case of torture stricto sensu, the type of ill-treatment contemplated by this article could, depending on the facts, constitute a criminal offence under the Criminal Code Act 1907 and/or give rise to civil proceedings for damages. In addition, section 3 of the Bermuda Constitution specifically prohibits inhuman or degrading treatment or punishment, as well as torture, and the procedural remedies guaranteed by section 15 of the Constitution would be available in any such case. Attention is also drawn to the application to Bermuda of article 7 of the International Covenant on Civil and Political Rights and, especially, article 3 of the European Convention on Human Rights, both of which also prohibit inhuman or degrading treatment or punishment. In general it can be said that the preventative measures and procedural protections outlined earlier in this report apply, as appropriate, in relation to such treatment or punishment as they apply in relation to torture.

304. As regards corporal punishment, there are provisions in the Criminal Code Act 1907, at present still unrepealed, which authorize whipping as a punishment and there are some other provisions in the laws of Bermuda which also nominally authorize corporal punishment. However, the repeal of the relevant provisions of the Criminal Code Act 1907 has already been approved and will take place in the course of 1994 and the courts of Bermuda, as a matter of judicial policy, do not impose corporal punishment under any of the provisions concerned.

British Virgin Islands

305. No new measures have been introduced, nor have any new developments taken place, since the presentation of the initial report in respect of the British Virgin Islands that might have a bearing on the implementation of the Convention in the Islands. However, it can be reported, with reference to a question that was raised by the Committee at the oral examination of that report and that was commented on in the supplementary material subsequently submitted by the United Kingdom Government (CAT/C/9/Add.14), that active consideration is now being given to the establishment of a formal scheme for legal aid in criminal cases. Subject to that, the position accordingly remains as stated in the initial report, as amplified at the oral examination and as subsequently supplemented in CAT/C/9/Add.14. The Government of the British Virgin Islands continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

Cayman Islands

I. INFORMATION OF A GENERAL NATURE

306. For the most part, the position with respect to the implementation of the Convention in the Cayman Islands remains as stated in the initial report in respect of the territory, as amplified at the oral examination and as subsequently supplemented in writing in CAT/C/9/Add.14.

307. However, since the presentation of the initial report and the submission of the supplementary material referred to above, there have been, in certain

areas, some new developments which may be thought to have a bearing on the implementation of some of the provisions of the Convention and there are also certain aspects in which the material previously submitted can be usefully amplified. Information on these matters is accordingly now submitted to the Committee. It is set out in part II of this report under the headings of the respective articles of the Convention to which it relates.

308. The Government of the Cayman Islands continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

II. NEW DEVELOPMENTS AND SUPPLEMENTARY INFORMATION

Article 3

309. It is to be noted that the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol thereto apply to the Cayman Islands. This is of particular importance because of the geographical proximity to the Cayman Islands of Cuba and to a lesser extent Haiti. The Cayman Islands have adopted for local use the United Kingdom Home Office guidelines on procedures and criteria for determining refugee status. These are themselves modelled on the guidelines issued by the United Nations High Commissioner for Refugees. The criteria and procedures used with regard to refugees have been endorsed by representatives of UNHCR who have visited the Cayman Islands.

310. Also relevant in this context are the provisions of the Immigration Law 1992 (and its predecessor, the Cayman Protection Law 1984) relating to deportation. Under this legislation the Governor has power to deport any person who is:

(a) A convicted and deportable person;

(b) An undesirable person;

(c) A destitute person;

(d) A prohibited immigrant who has entered the Islands contrary to the provisions of the law;

(e) A person whose permission to land and to remain or reside in the Islands, or any extension thereof, has expired or has been revoked and who fails to leave the Islands; or

(f) A person in respect of whom the Governor considers it conducive to the public good to make a deportation order.

The Governor must report all deportation orders to the Secretary of State for Foreign and Commonwealth Affairs.

311. No one has ever been repatriated to Cuba from the Cayman Islands. There have been three or four instances in the past seven years where citizens of Haiti have been deported to their country of origin. However, no deportations to Haiti have taken place since Haitian President Jean Bertrand Aristide was ousted in a military coup d'état in 1991. In each of the instances cited

above assurances were sought from the Ministry of External Affairs in Haiti that there would be no adverse consequences of repatriation for the Haitian citizens involved.

Article 10

312. The legal position as previously explained remains unchanged. However, it should be emphasized, as regards complaints by prisoners, that rule 8 of the Prisons Rules 1981, made under the Prison Law 1975, requires that a prisoner shall see the Director of Prisons within 24 hours of making a formal request to do so. Further, rule 41 requires that any case in which force has been used shall be reported in writing to the Director immediately thereafter.

313. In addition, the Director of Prisons is obliged, under regulation 3(4) of the Prison (Discipline for Prison Officers) Regulations 1984, to refer any alleged disciplinary offence to the police for their action if in his opinion it is of sufficiently serious nature. Any police constable, on production of an authority issued by or on behalf of the Commissioner of Police, may interview any prisoner wishing to see him.

314. The legal and administrative machinery therefore exists in the Cayman Islands for the investigation of all complaints of ill-treatment made by prisoners, including, of course, any complaints of torture or of cruel, inhuman or degrading treatment or punishment. No complaints of torture have ever been referred to the police.

Article 11

315. The Cayman Islands is currently undertaking a review of prison operations and rules. This is being carried out on the recommendation and under the guidance of the United Kingdom's regional adviser on prisons. Training of prison officers is a significant part of the exercise.

Articles 12 and 13

316. In 1992 the Royal Cayman Island Police Force established a separate Complaints and Discipline Branch, staffed by an experienced inspector and sergeant. The vigorous and effective investigation of complaints against the police and the punishment or correction of breaches of discipline is, of course, a topic that is closely monitored and is also fully reported on in the Police Force Annual Reports. Appended to the present report are statistics and information gathered from those Annual Reports relating to complaints and discipline cases for the years 1991, 1992 and 1993, with special reference to cases involving allegations of mistreatment of persons in police custody. It may be noted that none of the complaints was sufficiently serious to justify criminal proceedings being instituted against any of the police officers concerned. Also appended are extracts from the Annual Reports for those years dealing with the particular topic of Complaints and Discipline. [This information is available for consultation in the files of the Centre for Human Rights.]

Article 16

317. There are two matters to be noted in the context of article 16 of the Convention:

(a) The law of the Cayman Islands does not authorize the imposition of a sentence of imprisonment with hard labour;

(b) With effect from 10 May 1991, the death penalty for murder has been abolished in the Cayman Islands.

Falkland Island

318. No new measures have been introduced, nor have any new developments taken place, since the presentation of the initial report in respect of the Falkland Islands that might have a bearing on the implementation of the Convention in the territory. Accordingly, the position remains as stated in that report, as amplified at the oral examination and as subsequently supplemented in writing in CAT/C/9/Add.14. The Government of the Falkland Islands continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

Gibraltar

319. No new measures have been introduced, nor have any new developments taken place, since the presentation of the initial report in respect of Gibraltar that might have a bearing on the implementation of the Convention in the territory. Accordingly, the position remains as stated in that report, as amplified at the oral examination and as subsequently supplemented in writing in CAT/C/9/Add.14. The Government of Gibraltar continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

Hong Kong

I. INFORMATION OF A GENERAL NATURE

320. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by the United Kingdom on 8 December 1988, was extended to Hong Kong on 8 December 1992.

321. Although the provisions of the Convention cannot themselves be invoked before, and directly enforced by, the courts of Hong Kong, their substance can be so invoked and enforced by virtue of the Crimes (Torture) Ordinance* which was enacted in January 1993 to give effect in Hong Kong to the provisions of the Convention. It creates and defines the offence of torture, essentially in the same terms as in section 134 of the Criminal Justice Act 1988 of the United Kingdom, and provides for a penalty of life imprisonment for a person convicted of that offence. It also amends the law relating to extradition

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* Texts marked with an asterisk are available for consultation in the files of the Centre for Human Rights.

from Hong Kong in order to give effect to the provisions of the Convention which deal with the extradition of persons accused of acts of torture.

322. The International Covenant on Civil and Political Rights was ratified by the United Kingdom in respect of Hong Kong on 20 May 1976. Article 7 of the Covenant prohibits torture or cruel, inhuman or degrading treatment or punishment. Until recently, the provisions of the Covenant were implemented in Hong Kong through a combination of the common law, legislation and administrative measures. But in view of the strong support in the community for the embodiment of basic civil and political rights in a justiciable Bill of Rights, the Hong Kong Bill of Rights Ordinance* was enacted in June 1991. This gives effect in local law to the provisions of the Covenant as applied to Hong Kong. To complement the protection afforded by the Bill of Rights, the Letters Patent for Hong Kong* were amended so as to ensure that no law can be made in Hong Kong that restricts the rights and freedoms enjoyed in Hong Kong in a manner which is inconsistent with the Covenant as applied to Hong Kong. This amendment came into operation at the same time as the Bill of Rights Ordinance.

323. Under the Geneva Conventions Act 1957 of the United Kingdom, it is a criminal offence to commit a grave breach of any of the four Geneva Conventions which are set out in the Schedule to the Act. One such grave breach is torturing a protected person or subjecting him to inhuman treatment. The Act was extended to Hong Kong by the Geneva Conventions Act (Colonial Territories) Order in Council 1959, and such conduct would therefore be a criminal offence under the law of Hong Kong by virtue of the 1957 Act also.

324. It is also a criminal offence in Hong Kong, under the common law and also under statute, to assault a person. Acts of torture might also, depending on the circumstances, involve the commission of such crimes as murder or wounding. An assault also constitutes a wrong in civil law and could thus found a civil action for redress. The conduct prohibited by the criminal law or constituting a wrong in civil law includes conduct which, though it may fall short of torture, might amount to cruel, inhuman or degrading treatment or punishment.

325. Under the law of Hong Kong a confession made by an accused person may not be given in evidence against him if it was obtained by oppression, which term includes torture or cruel, inhuman or degrading treatment or punishment or the threat thereof.

326. The above matters are, as appropriate, dealt with in more detail where they arise in part II of this report. In addition, a fuller exposition of the judicial, administrative and other institutions and arrangements which obtain in Hong Kong for the protection of human rights in general and for the redress of grievances, including allegations of conduct, or threatened conduct, violating the rights guaranteed by the Torture Convention, is contained in the core document (or "country profile") for Hong Kong which has been submitted to the Centre for Human Rights and which will be before the Committee.

II. INFORMATION RELATING TO ARTICLES 2 TO 16 OF THE CONVENTION

Article 2

327. Under Hong Kong law, torture is prohibited under section 3 of the Crimes (Torture) Ordinance. A public official or person acting in an official capacity, whatever his nationality or citizenship, commits the offence of torture if, in Hong Kong or elsewhere, he intentionally inflicts severe pain or suffering on another person in the performance or purported performance of his official duties. Other persons, whatever their nationality or citizenship, commit the offence of torture if, in Hong Kong or elsewhere, they intentionally inflict severe pain or suffering on another person at the instigation or with the consent or acquiescence of a public official or any other person acting in an official capacity and the official or other person in performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

328. For the purposes of the Ordinance, it is immaterial whether pain or suffering is physical or mental and whether it is caused by an act or an omission.

329. It is a defence for a person charged with an offence under the Ordinance in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

330. The gravity of the offence of torture is reflected in the sanction imposed: a person contravening the Ordinance is liable to imprisonment for life.

331. Torture and cruel, inhuman or degrading treatment or punishment are also prohibited under article 3 of the Bill of Rights set out in the Hong Kong Bill of Rights Ordinance. Article 3 includes a particular prohibition on the subjection of any person without his free consent to medical or scientific experimentation.

332. Under the Geneva Conventions Act 1957, as extended to Hong Kong, it is an offence to inflict torture or inhuman treatment on a person who is a protected person under one of the four Geneva Conventions.

333. It is an offence in Hong Kong, both under common law and under the Offences against the Person Ordinance, to assault a person. Torture could also, depending on the circumstances, involve the commission of such offences as murder, manslaughter, wounding, etc. An assault also constitutes a civil wrong and can found a civil action.

334. Neither "exceptional circumstances" nor "superior orders" could be invoked in the law of Hong Kong as a justification for torture.

335. There has not been any reported case of torture as defined in the Crimes (Torture) Ordinance.

Article 3

336. Hong Kong's extradition legislation gives the Governor a discretion to refuse to order the surrender of a fugitive criminal to another jurisdiction even if, in law, the grounds for such surrender have been established. That discretion would be exercised consistently with the obligation in article 3. The Governor's decision is judicially reviewable.

337. There have of course been numerous cases of the extradition of fugitive criminals from Hong Kong to other countries. However, there has been no case of the Governor having to refuse to order the surrender of a person on the grounds that he would be in danger of being subjected to torture.

338. There has been one extradition case where a fugitive argued that, because one of the crimes for which his extradition to the United States was sought carried a mandatory minimum sentence of life imprisonment, his extradition to face the possibility of such a penalty would involve a violation of article 3 (inhuman or degrading treatment) of the Hong Kong Bill of Rights. The magistrate rejected this argument. He noted that there was no evidence before him that imprisonment in the United States of America was inhuman or degrading or infringed the inherent dignity of the human person. (United States v. Johnny Eng CMP No. 1274 of 1990, 27 September 1991.)

339. There are various provisions in the Immigration Ordinance authorizing the removal or deportation of a person who does not have the right of abode in Hong Kong. The cases in which this power may be exercised include cases where:

(a) He is refused permission to land in Hong Kong;

(b) He has entered Hong Kong unlawfully;

(c) He remains in Hong Kong without permission of the Director of Immigration;

(d) He has breached the immigration laws;

(e) He has been found guilty in Hong Kong of an offence punishable with imprisonment for not less than two years or his deportation is conducive to the public good.

340. A person who is subject to a removal order issued by the Director of Immigration or Deputy Director of Immigration may:

(a) Appeal to the Immigration Tribunal, which is an independent statutory body set up under the law;

(b) Petition the Governor under Colonial Regulation 168;

(c) Seek judicial review from the High Court.

341. Under article 9 of the Bill of Rights, a person who does not have the right of abode in Hong Kong but who is lawfully in Hong Kong may be expelled

from Hong Kong only in pursuance of a decision reached in accordance with the law and must, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion to, and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons specially designated by the competent authority.

342. In the exercise of the powers referred to in the preceding paragraphs, any allegation by a potential removee or deportee that he was likely to be subjected to torture in the country to which he was to be returned would be carefully assessed. His return would not be ordered if that allegation was thought to be well-founded.

343. Vietnamese migrants who have been screened out as non-refugees in accordance with the 1951 Geneva Convention and the 1967 Protocol on the status of Refugees will be returned to Viet Nam as illegal immigrants. Any person whom the Hong Kong Government or UNHCR believes to be a genuine refugee will not be repatriated. The policy to repatriate non-refugees from Viet Nam is based on the Comprehensive Plan of Action which was endorsed in 1989 by over 74 Governments at an international conference held at Geneva. The Comprehensive Plan of Action states that those who are regarded as refugees will be resettled overseas and those who are regarded as non-refugees will be treated as illegal immigrants and will be liable to be returned to their countries of origin.

344. The status determination criteria adopted are those recommended by UNHCR worldwide. The procedures were devised in consultation with UNHCR and contain several checks to ensure they are administered as fairly as possible.

345. Those being screened are given every assistance possible, including written information in advance about the screening process and their right of appeal. UNHCR lawyers provide prescreening counselling and are available to give legal and other advice to asylum-seekers at any stage. UNHCR is also able to monitor interviews of individuals, as well as to offer advice on any aspect of screening throughout the process.

346. Any person given non-refugee status in the first stage of screening has the right of appeal to an independent review board. UNHCR lawyers and the review board meet weekly to discuss appeal cases and, if UNHCR disagrees with the board's decision, it can unilaterally exercise its right to declare any asylum-seeker to be a refugee.

347. After years of experience, during which various improvements have been made, the Hong Kong Government believes that the present system is as fair as it can be. The screening procedures were subjected to rigorous scrutiny during a three-month judicial review in 1991. In its 70-page judgement, covering many detailed aspects of the screening process, the court endorsed the system and concluded that it was fair and practical.

348. Screening officers receive a two-week intensive training course before they take up their posts and attend regular workshops conducted by UNHCR to ensure the proper interpretation of the criteria for determining refugee

status. They, as well as Refugee Status Review Board members, are also kept conversant with the current situation in Viet Nam by regular familiarization visits to that country.

349. In October 1991 agreement was reached between the Governments of the United Kingdom, Hong Kong and Viet Nam for the return to Viet Nam under an Orderly Repatriation Programme of all those who have been screened out as non-refugees. As in the case of the voluntary repatriation programme organized by UNHCR the Vietnamese Government have given guarantees and assurances of non-discrimination and non-persecution to all those who are to be returned under the Orderly Repatriation Programme. The well-being of all returnees is being monitored by UNHCR and the British Embassy in Hanoi. Over 43,000 Vietnamese migrants have returned to Viet Nam either voluntarily or under the Orderly Repatriation Programme. There has not been a single substantiated case of persecution or discrimination.

350. The Immigration Department of the Hong Kong Government also handle the repatriation to China of ex-China Vietnamese illegal immigrants (ECVIIs). These are Vietnamese migrants who fled Viet Nam in the Sino-Viet Nam conflict in 1978/79 and have been resettled in China. They enter Hong Kong illegally for economic reasons. There has been no report of any of them being tortured on return to China.

351. All illegal immigrants intercepted are interviewed by immigration officers to obtain information on their background and to ascertain their identity and country of origin. If they object to repatriation, they are given an opportunity to put the grounds for this objection in writing. These will then be carefully considered before a decision is reached. An illegal immigrant who is subject to a removal order can appeal to an independent tribunal established under the law. Normally, the detention period for an illegal immigrant from China (who is willing to return to that country) is relatively short (less than a week) unless he is also involved in other criminal activities in Hong Kong or is required to give evidence in courts.

352. Any illegal immigrants who claimed that they would be subjected to torture on return would be allowed full opportunities to put their cases forward. These would then be thoroughly investigated and carefully considered. An order for return would not be made if such a claim were thought to be well-founded.

353. Except for persons who enjoy the right of abode in Hong Kong, deportation orders may be made against persons who have been found guilty in Hong Kong of an offence punishable with imprisonment for not less than two years or whose deportation the Governor deems to be conducive to the public good. Before such an order is made, the person concerned is given ample opportunity to state any grounds he may have for objecting to deportation, including the likelihood of his being subjected to torture after deportation, and these are carefully considered by the Governor. In the case of British citizens, a deportation tribunal chaired by a judge is appointed to hold an inquiry at which the potential deportee may make representations. The tribunal's report is forwarded to the Secretary for Security for consideration before a decision

is made. No person will be ordered to be deported if it is considered that there are well-founded fears that this may result in his being subjected to torture.

Article 4

354. All acts of torture as defined in the Convention are offences under the criminal law. As explained above, such acts are offences under section 3 of the Crimes (Torture) Ordinance and are capable of constituting other serious offences as well. Torture, contrary to section 3 of the Crimes (Torture) Ordinance, murder and certain other offences (such as wounding and causing grievous bodily harm) contrary to section 17 of the Offences against the Person Ordinance all carry a maximum sentence of life imprisonment. The offences of threatening to kill and of administering poison so as to endanger life carry a maximum penalty of 10 years' imprisonment.

355. By virtue of section 89 of the Criminal Procedure Ordinance, a person who aids, abets, counsels, or procures the commission of an offence is guilty of the like offence.

356. There has been no reported case of torture as defined in the Crimes (Torture) Ordinance.

Article 5

357. Under section 3 of the Crimes (Torture) Ordinance, the offence of torture is committed whether the conduct takes place in Hong Kong or elsewhere and the nationality of the perpetrator or the victim is immaterial. The courts of Hong Kong have full jurisdiction accordingly in conformity with article 5 of the Convention.

Article 6

358. Where it is alleged that a person who is present in Hong Kong has participated in an act of torture and this is brought to the attention of the authorities, the Hong Kong police would carry out a full investigation. Under section 50 (1) of the Police Force Ordinance the police have power to arrest without warrant a person reasonably suspected of an offence for which the sentence is fixed by law or for which a person may be sentenced to imprisonment on first conviction: this of course includes the offence of torture. An arrested person may normally be detained for questioning for up to 48 hours without charge. At the expiry of this period, he must either be charged and brought before a magistrates' court or be bailed to appear in court or be released without charge, either on bail or without bail.

359. The basic rights, in conformity with article 6 of the Convention, of a person arrested or detained with a view to his trial or extradition for the offence of torture are supported by article 5 of the Hong Kong Bill of Rights. If he is a foreign national, he is permitted, in accordance with paragraph 3 of article 6 of the Convention, to communicate with his High Commission or consulate: the arrangement for this is made by administrative means.

Article 7

360. The requirements of article 7 accord with the long-standing practice of the relevant authorities in Hong Kong and with the law administered by the courts of Hong Kong as regards the investigation, prosecution and trial of alleged criminal offences and the rights of persons charged with or convicted of such offences. These matters are now specifically regulated by articles 5, 6, 10, 11 and 12 of the Hong Kong Bill of Rights.

Article 8

361. The basis of the law relating to extradition from Hong Kong is now Schedule 1 to the Extradition Act 1989 of the United Kingdom which governs requests for surrender to foreign States and the Fugitive Offenders (Hong Kong) Order 1967 which governs requests for surrender to Commonwealth countries. Sections 5 and 6 of Hong Kong's Crimes (Torture) Ordinance made a number of adaptations to this body of law, as it applies to Hong Kong, for the specific purpose of implementing in Hong Kong the provisions of article 8 of the Convention. There has been no occasion to date to invoke either of those sections in practice since there has been no case in which the extradition from Hong Kong of any person accused of the crime of torture has been sought. However, the question has recently been raised whether the two sections, as currently drafted, are fully effective for their intended purpose or whether further or amending legislation may still be necessary. This question is now under active consideration. If the conclusion is that such legislation is required, it will of course be put in hand as soon as possible.

Article 9

362. The affording of assistance to other States parties as required by this article can be effected by furnishing information and providing investigatory assistance on an informal, non-statutory basis. In cases where the formal provision of evidence is requested, the necessary machinery is provided by sections 75-77B of the Hong Kong Evidence Ordinance (which substantially correspond to sections 1-5 of the United Kingdom's Evidence (Proceedings in Other Jurisdictions) Act 1975). Under this legislation, the High Court in Hong Kong can compel witnesses to testify if a request is received from a foreign court in which criminal proceedings have been instituted or are likely to be instituted if the evidence is obtained.

Article 10

363. All police officers are trained, through basic training and subsequent training courses, to treat all persons as individuals with humanity and respect and to act within the law at all times. These courses, one of the major purposes of which is to ensure the proper treatment of detained and arrested persons, cover the procedures governing the questioning of suspects, disciplinary codes stipulated in the Police Force Ordinance, Police General Orders and Headquarters Orders. All police officers are made aware that an infringement of laws governing a person's rights could constitute a criminal offence.

364. Induction and ongoing training (such as in-service and development training) is conducted to familiarize staff members with the requirements of the relevant legislation and policies. The relevant United Nations Standard Minimum Rules for the Treatment of Prisoners, the Bill of Rights and the provisions of the Crimes (Torture) Ordinance are included in the training programmes. Specialist training such as psychiatric nursing provides selected staff members with the professional knowledge to assist medical officers in the recognition of any abnormal physical signs of abuse, in the monitoring of the physical and mental well-being of inmates suspected of psychiatric problems and in the identification of any psychological feature which would indicate mental anguish resulting from whatever cause.

365. All law enforcement officers in the Customs and Excise Department, whether disciplined or civilian, involved in the custody, interrogation or treatment of arrested or detained persons have to receive induction training. The training programmes emphasize the need to treat everyone as an individual and with humanity and respect and to act within the law at all times. They also cover, inter alia, detailed procedures such as the "Rules and Directions for the Questioning of Suspects and the Taking of Statements"* (see para. 370 below) and other internal orders and instructions which aim at ensuring that detained or arrested persons are properly treated.

366. All immigration officers are trained in the proper handling of suspects in custody. They are also fully briefed on the provisions of the Crimes (Torture) Ordinance.

367. All officers of the Independent Commission Against Corruption have been made aware of the fact that torture is now a specific offence in the law of Hong Kong. They are also trained to treat detained persons in accordance with the "Treatment of Detained Persons Order" (see paras. 377-378 below).

368. All health care professionals, and in particular doctors and nurses working under the Hospital Authority and the Department of Health, are adequately equipped through their training and education to recognize quickly any abnormal physical signs of abuse. Both nurses and doctors, as part of their routine duties in caring for patients, closely monitor the physical and mental well-being of patients through history-taking, physical examinations and, if necessary, laboratory investigation.

369. Similarly, psychiatrists and psychiatric nurses working under the Hospital Authority are adequately equipped in terms of knowledge and skill to identify any psychological features which indicate mental anguish resulting from whatever cause.

Article 11

370. Police powers are under constant review in Hong Kong. The relevant provisions of the Police Force Ordinance governing police powers of arrest, search, seizure and detention were amended in 1992 to make them consistent with the Bill of Rights Ordinance. The Law Reform Commission published a report on arrest in November 1992. The Administration is now considering in great depth the recommendations of the Law Reform Commission on various police powers. Meanwhile, "Rules and Directions on the Questioning of Suspects and

the Taking of Statements" were promulgated in 1992 to ensure that written statements and oral answers obtained from suspects are voluntarily given and thus admissible as evidence in court. These "Rules and Directions" are based on the Judges' Rules as formerly in force in the United Kingdom.

371. The operation of custodial institutions and detention centres under the Correctional Services Department are governed by the following Ordinances:

(a) Prisons Ordinance and its subsidiary legislation (Cap. 234);

(b) Detention Centres Ordinance and its subsidiary legislation (Cap. 239);

(c) Drug Addiction Treatment Centres Ordinance and its subsidiary legislation (Cap. 244);

(d) Training Centres Ordinance and its subsidiary legislation (Cap. 280); and

(e) Immigration Ordinance and its subsidiary legislation (Cap. 115).

372. The above ordinances provide for the treatment of inmates in the custody of the Correctional Services Department and they also regulate the conduct and discipline of both the staff and inmates. The treatment of inmates, as provided for by such ordinances, is in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Torture and other cruel, inhuman or degrading treatment or punishment is strictly prohibited. The Commissioner of Correctional Services and his appointed officers (superintendents and above) are empowered to interrogate any person under his charge concerning any alleged offence against discipline. Where appropriate, such cases are referred to the police or other competent authorities.

373. Administrative instructions and guidelines are established for the management of institutions. These are incorporated in one or more of the following: Departmental Standing Orders; Headquarters' Administrative Instructions; and Institutional Job Descriptions. These instructions and guidelines are regularly reviewed and revised and provide comprehensive procedures for staff to follow in their day-to-day business. In conformity with the relevant legislation, they also prohibit any acts of torture. Any person in the Department who fails to comply with them is liable to disciplinary or criminal proceedings, as appropriate.

374. Regular reviews of legislation and policies are undertaken by the Department in order to identify inappropriate rules or regulations with a view to their eventual amendment or deletion. In the context of the prevention of abuses such as acts of torture, particular attention is paid to the need to ensure conformity with the Bill of Rights. It is also routine practice for institutional management to arrange that body checks on all inmates under custody are carried out by hospital officers at least once weekly to detect signs of injury and skin infection. Suspected acts of torture could therefore be detected at an early stage. Similarly, regular contact and cooperation with other government authorities have facilitated the prevention or early detection of criminal activities, which might involve acts of torture, in Correctional Services Department institutions. Visiting justices of the

peace, who are required by law to visit custodial and detention institutions regularly, can also receive complaints and propose recommendations and suggestions concerning these institutions.

375. The Prison Rules state that prisoners awaiting trial shall be kept apart from convicted prisoners. In addition, the Correctional Services Department Standing Orders stipulate that special cells or dormitories shall be set apart for prisoners awaiting trial.

376. Corporal punishment is no longer imposed in any custodial institution in Hong Kong. The Corporal Punishment Ordinance was repealed on 1 November 1990, and the sections of the Training Centre Ordinance and the Detention Centres Ordinance which referred to caning were also repealed on 12 June 1990. Work is in hand to amend the Prison Rules to delete the remaining references to corporal punishment. (As regards the abolition of corporal punishment in schools, see paras. 428-429 below).

377. The Independent Commission Against Corruption is a Commission established by law to investigate suspected cases of corruption or related offences. Its officers have power to arrest suspects and to detain them for a limited period for the purpose of further inquiries. Persons detained by the Commission are held in a purpose-built detention centre. The detention centre staff, although officers of the Commission, are not involved in the investigative work of the Commission. There is a separate category of "guarding officer" whose duties are restricted to the custody and welfare of detainees. The guards are answerable to their own commander.

378. The treatment of persons detained by the Commission is strictly controlled by legislation in the form of the "Treatment of Detained Persons Order"*. It can be seen from this Order that all rights and dignities of persons detained are protected by law.

379. No person may be detained under the power conferred on the Commission for more than 48 hours. Before the end of that time any person so detained must either be brought before a magistrate or released from detention. In addition, visiting justices of the peace attend the premises of the Commission twice a month in unscheduled visits to ensure that the treatment of persons detained is in accordance with the law. The justices enter any comments they have in a visiting justices report book. These entries are forwarded verbatim by the head of operations of the Commission to the Secretary for Constitutional Affairs, a senior official of the Hong Kong Government. The visiting justices have the absolute right to interview any person being detained by the Commission, and can make recommendations concerning the detention centre.

380. The Immigration Ordinance is kept under review to ensure its consistency with the Bill of Rights. The Rules and Directions for the Questioning of Suspects and the Taking of Statements which were promulgated in 1992 (see para. 370 above) and which apply equally to officials of the Immigration Department as they do to the police ensure that written statements and oral answers obtained from suspects are voluntarily given and thus admissible in evidence.

381. The treatment and custody of persons detained in immigration accommodation are regularly reviewed to ensure compliance with the Bill of Rights.

382. The Mental Health Ordinance defines and protects the rights of detained patients. The criteria for compulsory detention are set out in the Ordinance (see below) and are stringent. Even when these criteria are met, the power to detain is not invoked except in cases where all other means of providing for the patient's care and treatment having been fully considered, detention in hospital is considered the most appropriate means of providing the care and treatment which he needs.

383. The criteria set out in the Mental Health Ordinance for the compulsory admission of a person to hospital for assessment or for treatment for mental disorder are as follows. First, he must be suffering from a mental disorder as defined by the Ordinance. Second, the mental disorder must be of a nature or degree which makes admission to hospital appropriate. Third, medical treatment must be necessary for his own health or safety or for the protection of other persons. Fourth, the treatment cannot be provided in some other way, e.g. on an out-patient basis. In addition, offenders may be detained compulsorily under section 45 of the Mental Health Ordinance.

384. These stringent criteria reflect the gravity of a situation in which a person is deprived of his liberty. Whether they are judged to be satisfied in any individual case is of course to be decided by the doctors and other professionals concerned with the care of the patient.

385. Electro-convulsive therapy is only administered with the patient's consent or a second medical opinion, whilst all forms of treatment that could be considered to be of an irreversible or hazardous nature (for example, psychosurgery) always require the patient's consent as well as a second medical opinion. All second opinions are given by doctors with higher professional qualifications or with at least three years' continuous experience in the speciality and who are appointed especially for that purpose by the Secretary for Health and Welfare. Again, the type of treatment given to a patient is a matter for the clinical judgement of his responsible medical officer and clinical team.

386. The relevant provisions dealing with persons detained following (or in connection with) criminal proceedings are as follows. Under section 45 of the Mental Health Ordinance, the court may, if satisfied that a convicted offender has been medically assessed to be suffering from one of the forms of mental disorder defined in the Ordinance, by order authorize his admission to, and detention in, a hospital for psychiatric treatment if that is the most suitable method of disposing of his case. Under section 52 of the Mental Health Ordinance, the Governor may, by a transfer order, direct a mentally disordered prisoner who is serving a sentence of imprisonment to be removed to and detained in such mental hospital as is specified in the order for treatment. Under section 53, the Governor may also make a transfer direction in respect of a prisoner who is not serving a sentence of imprisonment, e.g. a prisoner who has been remanded in custody awaiting trial or sentence.

387. There are important safeguards for detained patients. In particular, they or their relative may apply to have the authority for their detention reviewed by a Mental Health Review Tribunal, which is an independent body. Usually a patient may apply for review at any time and if refused he may apply again after 12 months or earlier with the leave of the Tribunal. If he does not so apply his case will nevertheless be referred to the Tribunal by the Medical Superintendent (if the patient is liable to be detained in a mental hospital) or by the Commissioner for Correctional Services (if the patient is liable to be detained in the Correctional Services Department Psychiatric Centre) after 12 months. The Tribunal has the power to discharge a patient, either absolutely or conditionally, if certain criteria are met. This power does not normally apply to any person who is serving a sentence of imprisonment pursuant to a court order and who has been transferred to hospital during the period of that sentence.

388. Other safeguards for the rights of detained mental patients include the following:

(a) All detained patients must be given an explanation of their rights under the Mental Health Ordinance. The matters covered must include the procedures for securing their discharge, the conduct of their treatment, how they can make a complaint and their rights in relation to Mental Health Review Tribunals;

(b) Like all other persons, detained patients are entitled, at their own expense, to seek legal advice or a second opinion. A patient may be represented before a Mental Health Review Tribunal by anyone he wishes, except another patient;

(c) A relative of every detained patient should be kept fully advised, unless the patient objects, of the patient's rights.

Mental hospital visitors (by tradition, the visiting justices of the peace), who are required by law to visit hospitals regularly, can receive complaints and make recommendations concerning the hospitals.

389. The treatment of Vietnamese migrants in detention is subject to the detention centres' rules which have been drawn up with full regard to the provisions of the Bill of Rights. In addition, they have access to lawyers, non-governmental organization workers and UNHCR field officers and they are also allowed to be visited by other persons from time to time. There are also regular visits to detention centres by justices of the peace, members of the United Kingdom Parliament, Hong Kong legislative councillors, district board members and journalists. The presence of UNHCR in the detention centres also ensures that any maltreatment of the Vietnamese migrants would be immediately brought to the attention of the proper authorities.

Article 12

390. It is the duty of the police to investigate any alleged offence impartially, quickly and effectively.

391. Any person who alleges he has been tortured may go to the police. They have all the necessary powers under the Police Force Ordinance and other statutory provisions and under common law to conduct a thorough investigation of any such allegation, and they would of course do so. In addition, there are special arrangements, as described above in relation to article 11 of the Convention, for the investigation of allegations concerning the ill-treatment of persons in custody. See also under article 13 below.

Article 13

392. As already explained, anyone in Hong Kong may complain to the police or institute civil proceedings if he claims that a public officer has ill-treated him.

393. Like the general public, persons detained in police custody have the right to lodge a complaint to the Complaints Against Police Office, an internal complaints mechanism within the police force, if they consider that they have been improperly treated by any police officer. Although there is no legal provision establishing the right to complain, the Police General Orders, which are promulgated by the Commissioner of Police under the authority of the Police Force Ordinance, lay down detailed arrangements for handling complaints. To ensure impartiality and fairness in all investigations of complaints, the Complaints Against Police Office will prepare a case report for the endorsement of the Police Complaints Committee. This is a non-statutory independent body appointed by the Governor to monitor and review the investigations by the Complaints Against Police Office. The Chairman and two Vice-Chairmen of the Committee are executive councillors or legislative councillors. Committee members include eight justices of the peace, the Attorney General or his representative and the Commissioner for Administrative Complaints.

394. The main functions of the Police Complaints Committee are to monitor and review the handling by the police of public complaints, to identify faults in police procedures which lead to complaints, and, if necessary, to make recommendations to the Governor. The members of the Committee are supported by a full-time independent secretariat whose main function is to reduce the workload directly falling on the members and to enhance the Committee's monitoring role.

395. The Committee publishes an annual report on the discharge of its functions during the year. The report is submitted to the Governor and tabled in the Legislative Council. The annual reports include summaries of cases of interest, statistics on complaint case reports endorsed, comments on existing complaints systems, etc.

396. After the Committee's endorsement of a case report, the Complaints Against Police Office will notify the complainant of the results and take appropriate follow-up actions. In addition, remedial measures on procedural matters recommended by the Committee will be undertaken by the police. If an officer is found to have committed a criminal offence, appropriate criminal proceedings will be taken. For other cases, appropriate disciplinary/internal action will be taken by the Commissioner of Police.

397. To further improve the monitoring system, it is planned to make the Police Complaints Committee a statutory body.

398. In 1993, 3,374 complaints against the police were received. Over 97.7 per cent of the complaints were made by persons either involved with or subjected to police action. Complaints of assault, neglect of duty and conduct/manner made up the majority of the complaints, 79.7 per cent in total. Investigations into 3,520 cases were completed, of which 100 cases were substantiated, 34 cases classified as false and 2,338 cases were either withdrawn or found not to be pursuable. A total of 17 police officers were disciplined and 2 charged with offences as a result of the complaints. None was charged with torture. In addition, 204 officers were subjected to corrective action.

399. Complaints procedures for prisoners are reviewed from time to time in the light of experience and in keeping with changing circumstances. There are a number of avenues for prisoners' complaints. Prominent notices and information booklets are available in institutions to inform inmates of their rights to lodge any complaints. A staff member or any inmate may approach any of the following authorities to air any grievances he may have, including any complaints of conduct which might constitute torture or other cruel, inhuman or degrading treatment or punishment:

(a) The Commissioner of Correctional Services and headquarters senior staff who visit institutions on a regular basis;

(b) The visiting justices of the peace who are required by law to visit an institution fortnightly;

(c) The institutional management;

(d) The Complaints Investigation Unit of the Correctional Services Department;

(e) Other external authorities such as the Commissioner for Administrative Complaints (see para. 424 below), the Office of Members of the Legislative Council, the police and the Independent Commission against Corruption.

400. Additionally, staff and inmates have free access to the courts for the purpose of bringing civil proceedings. They may also apply to the courts for judicial review of the decisions made by the Correctional Services Department, particularly on matters related to disciplinary hearings.

401. When necessary, steps will be taken to ensure that the complainant and witnesses are protected against all ill-treatment and intimidation as a consequence of the complaint or any evidence given.

402. In 1992, a total of 53 complaints were received from inmates complaining about use of unnecessary force, threat and maltreatment by officers of the Correctional Services Department. Six of them were substantiated, all of them of a minor nature.

403. Any complaints of ill-treatment lodged by a person in immigration custody are brought to the attention of a senior immigration official and investigated expeditiously and impartially. If there is prima facie evidence of a criminal offence committed by an immigration officer, the case is reported immediately to the police for further investigation.

404. In 1990-1992, 14 complaints alleging assault or threat were received. All of them were found to be unsubstantiated.

405. Any person who alleges that he has been ill-treated by a customs official may complain to the Departmental Complaints Officer or to any member of the Department, who will refer the complaint to the Departmental Complaints Officer. There are specific instructions that all complaints made by detainees should be properly recorded and reported. Complaints which indicate the possible commission of a criminal offence will eventually be referred to the police for criminal investigation.

406. In 1993, seven complaints of assault were received. Six of them were found unsubstantiated while the investigation of the remaining one is pending.

407. Any person detained by the Independent Commission against Corruption is, upon release from detention, asked if he has any complaints about his treatment. He can either have his reply recorded for him or record it himself on an "arrest/detention sheet". This arrest/detention sheet is a document which records the full account of a detainee's time in detention.

408. In addition to recording a complaint on the arrest/detention sheet, any complaint of ill-treatment can be made to the Commissioner himself, to the police, to any legislative councillor or to the Independent Commission against Corruption Complaints Committee. This is an independent committee chaired by the Senior Member of the Executive Council and composed of leading members of the community, including members of the Executive Council and the Legislative Council, the Attorney General and the Commissioner for Administrative Complaints.

409. As already explained, assault and other unlawful violations of a person's physical integrity or liberty are of course offences in Hong Kong. Any complaints of such conduct made against officers of the Independent Commission against Corruption are referred to the police for independent investigation. A complainant may also take civil action in the courts against the Commission or any of its officers.

410. In 1992, only one complaint of assault was received. It was not substantiated.

411. If it is alleged that a mentally ill patient has been ill-treated by any public officer, a complaint can be lodged by the patient or his relatives/friends with the medical superintendent of the mental hospital, or with one of the visiting justices of the peace who, under the Mental Health Ordinance, are required to pay monthly visits to the hospitals.

412. The ill-treatment and/or wilful neglect of a mental health patient is a criminal offence under the Mental Health Ordinance. Mental health patients who claim to have sustained harm as a result of such conduct may have recourse to the courts for civil redress.

Article 14

413. Under the Crown Proceedings Ordinance (which is modelled on the Crown Proceedings Act 1947 of the United Kingdom) a person who alleges that a civil wrong (which would of course include an act of torture) has been committed against him by a public official acting in the course of his employment may bring an action for damages not only against the official in question but also against the Hong Kong Government. The nationality or other status (e.g. as a refugee) of the plaintiff is immaterial.

414. Under the Criminal Procedure Ordinance, the courts in Hong Kong have the power to order a convicted person to pay such compensation to any aggrieved person as they consider reasonable. Again, the nationality or other status of the aggrieved person would not be material.

415. Ex gratia compensation is payable to victims of crimes of violence or law enforcement under the Criminal and Law Enforcement Injuries Compensation Scheme. This scheme, approved by the Executive Council and implemented since 23 May 1973, is non-means-tested. Payments are made from public funds.

416. For the purpose of the scheme, compensation may be claimed for any injury (whether physical or psychiatric) or death if the injury or death results from any criminal offence involving the use of violence by the assailant on the victim or from the use of a weapon by a law enforcement officer in the course of his duty. A law enforcement officer means any police officer or other public officer on duty.

417. All residents of Hong Kong, including foreign nationals who have entered Hong Kong legally, are covered by the scheme. Vietnamese refugees are also covered.

418. The scheme is administered by the Criminal Injuries Compensation Board and the Law Enforcement Injuries Compensation Board. Application for an award must be made in writing and is then considered by the relevant Board which decides whether compensation is payable. The applicant is notified of the Board's decision in writing. An appeal can then be made to an ad hoc appeal board which is convened upon application. Legal representation in the appeal may be allowed at the appellant's own expense, subject to the approval of the individual appeal board.

419. If compensation is awarded, it is paid in the form of a lump sum grant. In criminal injuries cases it is based on the same rates of compensation as are paid under the Emergency Relief Fund (currently ranging from HK$ 1,086 to HK$ 76,380). In law enforcement injuries cases, it is assessed either on the basis of common law damages or in accordance with the Emergency Relief Fund rates, whichever is the greater.

Article 15

420. At common law, a confession by an accused person is inadmissible in evidence in criminal proceedings where it appears to the court that the confession was obtained by oppression. The term "oppression" could include torture or cruel, inhuman or degrading treatment or punishment or the threat thereof.

421. As explained in paragraph 370 above, in late 1992 the Administration introduced a new set of guidelines (the "Rules and Directions for the Questioning of Suspects and the Taking of Statements") for law enforcement agencies to follow. Their aim is to ensure that written statements and oral answers obtained from suspects are voluntarily given and admissible in evidence. As well as regulating how suspects may be questioned and statements taken, the Rules and Directions also stipulate the facilities that should be made available to persons in custody or under investigation and that they should be informed of their rights and of such facilities.

Article 16

422. The preceding paragraphs of this report have dealt not only with torture but also, as appropriate, with conduct which falls short of torture but which may amount to cruel, inhuman or degrading treatment or punishment. In many cases the same legislative provisions apply and the same preventive or protective measures are available. In general, it may be said that any cruel, inhuman or degrading treatment or punishment committed by, at the instigation of, or with the consent or acquiescence of, any public official or anyone acting in an official capacity would cause grave concern, and the Government of Hong Kong would regard such conduct as wholly to be condemned by appropriate criminal or disciplinary sanctions.

423. The Government is concerned that everyone acting in a public capacity shall act according to the rule of law, and has accordingly put in place a number of measures designed to prevent ill-treatment taking place. Many of these have already been referred to in this report, but it may be helpful to draw attention to certain features of the system (and more generally, of the situation currently obtaining in Hong Kong) that are of particular interest in this context.

424. The Commissioner for Administrative Complaints is an independent authority established under the Commissioner for Administrative Complaints Ordinance to provide, for ordinary citizens, some means whereby an independent person outside the public service can investigate, and report on, grievances arising from administrative decisions, acts, recommendations or omissions. The Commissioner has jurisdiction over all government departments except the Royal Hong Kong Police Force and the Independent Commission against Corruption. However, he is an ex officio member of both the Police Complaints Committee and the Independent Commission against Corruption Complaints Committee, which oversee investigations into complaints made against members of the Royal Hong Kong Police Force and the Independent Commission against Corruption respectively (see paras. 393-397 and 408 above).

425. Police disciplinary procedures are governed by the Police (Discipline) Regulations, which were last overhauled in 1977. Under the Regulations, it is an offence for a police officer to exercise unlawful or unnecessary authority resulting in loss or injury to any other person. This covers incidents where an officer without good or sufficient cause conducts a search, or uses any unnecessary violence towards any person, or improperly threatens any person.

426. Any person alleging improper treatment can lodge a complaint with the Complaints against Police Office. All investigations by that Office are monitored by the Police Complaint Committee.

427. Members of the public can lodge formal complaints against officers of the Independent Commission against Corruption with the Commissioner personally, the police, or any legislative councillor. Reports on all investigations of such complaints will be considered by the Independent Commissioner against Corruption Complaints Committee.

428. Before 20 September 1991, the Education Regulations, made under the Education Ordinance, prohibited the administration of corporal punishment to a female pupil, but allowed the principal of a school, or a teacher authorized by the principal, to administer such punishment to a male pupil. In 1990, the Education Commission, a high-level educational advisory body, considered the question of corporal punishment in detail and recommended that such punishment should be abolished entirely in view of its harmful effect on children. The Government subsequently accepted the recommendation and the Education Regulations were amended accordingly.

429. Accordingly, with effect from 20 September 1991, it is an offence for any teacher to administer corporal punishment to a pupil. The maximum penalty for the offence is a fine of HK$ 5,000 and one year's imprisonment. During the school year 1992/93, there were four complaints about corporal punishment in schools. Two of them were substantiated and warning letters were issued to the staff concerned.

430. Public concern over the problem of child abuse has been growing. There has been considerable work to create a better legal framework as well as interdisciplinary cooperation to provide supportive and rehabilitative services for both the children concerned and the abusive parents. Guidelines have been issued to various professions to facilitate detection of abuse symptoms and early intervention.

431. Statutory responsibility for the care and protection of children rests mainly with the Director of Social Welfare and the Commissioner of Police. The newly revised Protection of Children and Juveniles Ordinance (Cap. 213) provides, with effect from 1 November 1993, the legal framework whereby the Government can take action to remove a child who is in need of care or protection to a place of refuge. The changes made include:

(a) The revision of the meaning of "in need of care or protection" to encompass the effects of psychological abuse or neglect;

(b) The insertion of a child assessment procedure to enable the Director of Social Welfare to observe the condition of, or to obtain a medical or psychological or social assessment of, a child for the purpose of determining whether or not the child is in need of care or protection;

(c) The insertion of a provision under which, if the assessment notice has not been complied with or cannot be served, the Director of Social Welfare may remove the child for assessment. In such a case the child may not be detained for more than 12 hours in the first place and such further periods, not exceeding 36 hours in total, as, in the opinion of the person carrying out the assessment (a medical practitioner or a clinical psychologist or an approved social worker), is necessary for the completion of the assessment. But this opinion has to be confirmed by a second opinion from a similarly qualified person;

(d) A provision requiring the Director of Social Welfare to make an application to court within 48 hours for any removal or detention under the Ordinance;

(e) A provision requiring the Director of Social Welfare to obtain a warrant issued by a magistrate, juvenile court or district court to enter premises by force for the purpose of removal of a child;

(f) A provision revising the level of fines for offenders under the Ordinance, having regard to present-day values.

432. Provisions also exist in the Offences against the Person Ordinance (Cap. 212) for the prosecution and punishment of persons who abuse children.

433. A Working Group on Child Abuse was set up in 1983 to conduct a general review of the handling of child abuse cases. The Working Group submitted a report, in August 1983, which proposed 32 improvements covering preventive education and publicity and training programmes for those involved in the teaching, handling and helping of children as well as the reporting and handling of child abuse cases. The Working Group was reconvened in 1984 and 1985 in order to review the progress made. A number of new recommendations were made. One of these was that a multidisciplinary conference on child abuse should be convened. This was done, by the Hong Kong Council of Social Service and the Hong Kong Government, in December 1987 and it attracted 375 participants from various professions including medical practitioners, social workers, teachers, psychologists and police officers. The Working Group was reconvened again in 1988 and in 1993. Strenuous efforts have been made to prevent and combat the problem of child abuse as well as to stress the need for love and concern for the proper growth of children.

434. On the preventive side, public education on the provision of quality care to children is channelled through the mass media, mass activities, exhibitions, seminars, talks, pamphlets, posters, etc. The public is also encouraged to report any suspected cases of abuse. A telephone hotline is provided for this purpose.

435. Social workers, both in the Government and the subvented sector, are trained to detect and handle child abuse cases. In addition, the Government

also provides training for nursery workers, teachers, police officers, nurses and medical students to help them understand the problem. To better equip professionals with detection skills, a "Guide to the Identification of Child Abuse" was published by the Government in 1992 and was redistributed in 1993. A comprehensive set of guidelines ("Handling Procedures for Child Abuse Cases") for multidisciplinary professionals was revised in line with the newly amended Protection of Children and Juveniles Ordinance and is followed by all disciplines to ensure a consistent approach to dealing with child abuse cases. The division of responsibilities among professionals and the competent authorities to deal with each step in the investigation are laid down in the guidelines.

436. In the actual handling of child abuse cases, rehabilitation services are provided in the form of medical/psychiatric treatment, psychological treatment and counselling, out-of-home care and other welfare services as appropriate. Financial compensation under the Criminal and Law Enforcement Injuries Compensation Scheme (see paras. 415-419 above) is also available in confirmed cases of abuse which have been reported to the police.

437. Arrangements have also been made for the collection of more accurate data on cases of reported child abuse. The Social Welfare Department keeps data and monitors the number of child abuse cases referred either from the voluntary sector or from within the service units under the Department. At the end of June 1993, there has been a total of 477 child abuse cases involving 526 children.

438. At present children with inadequate care and protection may be put under the care of residential homes operated either by the Government or by non-governmental organizations. These homes provide child-care programmes which include indoor and outdoor activities, educational programmes both inside or outside the homes, and other vocational-skill training programmes through extracurricular activities.

439. It is the Social Welfare Department's policy not to use physical or mental punishment to discipline children in residential homes. For homes caring for children with behavioural problems, a points system is adopted to reward good behaviour and deter misbehaviour by deducting points gained. Guidelines and operation manuals are prepared for the staff working in residential homes and training courses are held regularly, to equip them better to carry out their duties professionally.

440. As regards complaints and complaint procedures for children's homes under the jurisdiction of the Social Welfare Department, the operation of each of the residential homes is closely monitored by the Department. The residential homes also work closely with the parents and the referring workers on the welfare plan and training of the cases in the homes. Any complaints of maltreatment can be made directly to the respective superintendents, visiting officers or district social welfare officers for investigation and, if they are substantiated, action will be taken to rectify the situation. These arrangements ensure that complaints are considered at the necessary high level.

441. All homes run by the Government and some homes run by NGOs are also visited regularly by justices of the peace. These visits are carried out without prior warning so as to ensure that there is no covering up of any malpractice in the operation of the homes. The visiting officers of the Social Welfare Department are also required to visit the NGO homes on a regular basis. So far, no complaint of maltreatment or excessive punishment by residential homes has been reported by the justices of the peace or visiting officers.

442. The legal and administrative frameworks governing the operation of probation service, community service orders service, reformatory school orders service, remand service and places of refuge for young offenders are the following:

(a) Persons not placed under custody:

(i) Community Service Orders Ordinance, Cap. 378;

(ii) Probation of Offenders Ordinance and Probation of Offenders Rules, Cap. 298;

(iii) Manual of Procedures, Community Service Orders Scheme;

(iv) Manual of Procedures, Probation Service;

(b) Persons placed under custody: The custody and treatment of persons placed under custody in Social Welfare Department homes are legally governed as follows:

Persons	By
Placed under probation order with residential requirement in probation home/hostel	Probation of Offenders Ordinance and Probation of Offenders Rules, Cap. 298
Placed under reformatory school order	Reformatory Schools Ordinance and Reformatory School Rules, Cap. 225
Placed under detention in accordance with S.15 (1) (k) of Juvenile Offenders Ordinance	Juvenile Offenders Ordinance and Remand Home Rules, Cap. 226
Placed under remand pending investigation by police, trial or sentence	Juvenile Offenders Ordinance and Remand Home Rules, Cap. 226

443. Minimum requirements regarding treatment, punishment and justices of peace visits are set out in the Regulations and Rules made under the

respective Ordinances. In addition, the operation of all residential services is governed by the Manual of Procedures, Residential Training Centres for Young Offenders.

444. The management of each service unit is the responsibility of the unit officer-in-charge. He is supervised by and is accountable to a senior officer at the senior social work officer level, who in turn is supervised by and accountable to a chief social work officer. In addition to social work training, probation officers and social workers in residential services are provided with induction courses, refresher courses and on-the-job training to ensure that they know the relevant legal requirements and the expected standards of treatment for clients. The quality of service is subject to checks by senior staff during visits to the offices/institutions and in their direct contact with the clients. A client or his relative may air grievances, including any which relate to alleged acts of inhuman or degrading treatment or punishment, by approaching the field management, the Director of Social Welfare or other external persons or authorities such as the Commissioner for Administrative Complaints, members of the Legislative Council or the police.

445. As regards clients placed under custody or residential training, the superintendent of the residential unit is responsible for the management and operation of the unit, assisted by an assistant superintendent and other unit heads. The superintendent is himself supervised by and accountable to a senior social work officer, who in turn is supervised by and accountable to a chief social work officer. All the residential units are placed under the headquarters' direct line management, to ensure greater monitoring and efficiency. In addition, two justices of the peace visit each residential unit monthly (date and time not announced in advance) and their observation reports are forwarded to the policy branch. They are empowered by law to interview any resident, and to look into any issue concerning the residential unit.

446. Each residential unit has a full-time registered nurse, and it is visited weekly (once or twice depending on need) by a qualified and registered medical practitioner. These medical and nursing officers are by profession adequately trained to be able to quickly recognize any abnormal physical sign of abuse. Residents receiving long-term training are allowed visits by their family members and registered friends on a weekly basis. Short-term residents are allowed visits on a daily basis. Such regular and frequent contacts with family members and friends help to ensure that if any resident has suffered any ill-treatment, it will be readily exposed. Each residential unit is also regularly visited by social work students supervised by training institute instructors, and very large numbers of volunteers from universities and post-secondary colleges. Residents are allowed to correspond with their parents and friends by mail, which is uncensored. Such frequent contacts with outside persons also help to ensure an enlightened, humane and open operation.

447. As to complaints and complaint procedures regarding offenders' homes, a notice is prominently displayed in each office/residential unit to inform the clients and their family members that they can lodge complaints with the supervisor of the officer-in-charge of the unit or with the Commissioner for

Administrative Complaints. The name of the supervisor, his telephone number and that of the Commissioner for Administrative Complaints are printed on the notice.

448. Residents are also at liberty to file complaints with any member of the district boards, the Urban/Regional Council or the Legislative Council. Any person can also file a complaint against any government department with the office of the Commissioner for Administrative Complaints (see para. 424 above).

449. Irrespective of the channel through which a complaint of ill-treatment has been pursued, it will be thoroughly investigated in accordance with the relevant operational instructions, departmental complaints procedures and legal requirements. The outcome of the investigation will be reported to the complainant. If the complaint concerns conduct which is or which may be a criminal offence, the matter is reported to the police for them to investigate and, if appropriate, pursue. In other cases, or where the police advise that criminal proceedings are not appropriate, the matter is pursued and, if necessary, action is taken according to the disciplinary procedures governing the civil service.

Montserrat

450. In general, the position with respect to the implementation of the Convention in Montserrat has not changed since the presentation of the initial report in respect of the territory. Accordingly, it remains as stated in that report, as amplified at the oral examination and as subsequently supplemented in writing in CAT/C/9/Add.14. However, it can now be reported, with reference to article 11 of the Convention, that a revision of the Prison Rules is currently being undertaken: as previously reported, the Police Interrogation Rules and Instructions are kept under systematic review. The information contained in the initial report can also be supplemented, with reference to article 13 of the Convention, by noting that section 92 of the Penal Code makes it a criminal offence to interfere with a witness and, with reference to article 14 of the Convention, by noting that section 28 of the Penal Code provides that any person who is convicted of an offence may be adjudged to make compensation to any person who is injured by his offence, such compensation to be either in addition to or in substitution for any other punishment. Subject to the foregoing, there are no new measures or new developments subsequent to the initial report which should be drawn to the Committee's attention as likely to have a bearing on the implementation of the Convention in the territory. The Government of Montserrat continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

Pitcairn

451. No new measures have been introduced, nor have any new developments taken place, since the presentation of the initial report in respect of Pitcairn that might have a bearing on the implementation of the Convention in the territory. Accordingly, the position remains as stated in that report, as amplified at the oral examination and as subsequently supplemented in writing

in CAT/C/9/Add.14. The Government of Pitcairn continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

St. Helena

452. No new measures have been introduced, nor have any new developments taken place, since the presentation of the initial report in respect of St. Helena that might have a bearing on the implementation of the Convention in the territory. Accordingly, the position remains as stated in that report, as amplified at the oral examination and as subsequently supplemented in writing in CAT/C/9/Add.14. The Government of St. Helena continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

Turks and Caicos Islands

453. No new measures have been introduced, nor have any new developments taken place, since the presentation of the initial report in respect of the Turks and Caicos Islands that might have a bearing on the implementation of the Convention in the territory. Accordingly, the position remains as stated in that report, as amplified at the oral examination and as subsequently supplemented in writing in CAT/C/9/Add.14. The Government of the Turks and Caicos Islands continues at all times to seek to ensure that the requirements of the Convention are scrupulously observed.

Appendices

I. LIST OF DOCUMENTS REFERRED TO IN THE REPORT

A. Acts of Parliament

Offences against the Person Act 1861

Geneva Conventions Act 1957

Children and Young Persons Act (Northern Ireland) 1968

Social Work (Scotland) Act 1968

Immigration Act 1971

Criminal Procedure (Scotland) Act 1975

Mental Health Act 1983

Mental Health (Scotland) Act 1984

Police and Criminal Evidence Act 1984

Education Acts 1986 (No. 2) and 1993

Criminal Justice Acts 1988 and 1991

Children Act 1989

Extradition Act 1989

Prevention of Terrorism (Temporary Provisions) Act 1989

Criminal Justice (International Cooperation) Act 1991

Northern Ireland (Emergency Provisions) Act 1991

Asylum and Immigration Appeals Act 1993

Police and Magistrates' Courts Act 1994

Criminal Justice and Public Order Act 1994

B. Other legislation

Scottish Prison Rules 1952

Police (Discipline) (Scotland) Regulations 1967

Immigration Rules made under the Immigration Act 1971

Northern Ireland Prison Rules 1982

Mental Health (Northern Ireland) Order 1986

Police (Northern Ireland) Order 1987

Criminal Injuries (Compensation) (Northern Ireland) Order 1988

Police and Criminal Evidence (Northern Ireland) Order 1989

Police and Criminal Evidence Act 1984 (Tape Recording of Interviews) Orders 1991

Asylum Appeals (Procedure) Rules 1993

C. Other documents

Report by the European Committee for the Prevention of Torture on its visit to Great Britain in 1990

Report by the European Committee for the Prevention of Torture on its visit to Northern Ireland in 1993

Codes of Practice (A to E) issued under the Police and Criminal Evidence Act 1984

Codes of Practice issued under the Police and Criminal Evidence (Northern Ireland) Order 1989

Codes of Practice issued under the Northern Ireland (Emergency Provisions) Act 1991

Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland (1979)

Annual Report of the Independent Commissioner for the Holding Centres

White Paper: "Custody, Care and Justice" (Cm 1647) (September 1991)

Report by Lord Woolf into prison disturbances in England and Wales in 1990

Annual Report of the Inspectorate of Prisons in England and Wales

Instruction to prison governors in England and Wales and guidance pack on caring for the suicidal in custody (February 1994)

Prison Service Code of Discipline in England and Wales

Annual Report of the Commissioner of the London Metropolitan Police

Annual Report of the Police Complaints Authority

Annual Report of the Chief Constable of the Royal Ulster Constabulary

Annual Report of the Independent Commission for Police Complaints for Northern Ireland

Guidance on how to make a complaint against a member of the armed forces in Northern Ireland

Annual Report of the Independent Assessor of Military Complaints Procedures in Northern Ireland

Annual Report of the Children Act Advisory Committee

White Paper: "Scotland's Children: Proposals for Child Care Policy and Law" (Cm 2286) (August 1993)

"Working Together under the Children Act 1989" - child protection guidance for England and Wales

"Cooperating to Protect Children" - child protection guidance for Northern Ireland

II. LIST OF ANNEXES*

Annex A - Texts of the United Kingdom legislation on torture

Annex B - Codes of Practice issued under the Northern Ireland (Emergency Provisions) Act 1991

Annex C - First Annual Report of the Independent Commissioner for the Holding Centres (January 1994)

Annex D - Instruction to prison governors in England and Wales and guidance pack on caring for the suicidal in custody (February 1994)

Annex E - Guidance on how to make a complaint against a member of the armed forces in Northern Ireland

Annex F - First Annual Report of the Independent Assessor of Military Complaints Procedures in Northern Ireland (May 1994)

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* These documents, which have been received from the British Government, may be consulted in the files of the United Nations Centre for Human Rights.